United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

74-2092

IN THE
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

NO._____

JO DAVIS MORTENSON,

APPELLANT

vs

SYRACUSE UNIVERSITY,etc., et al.,

APPENDIX TO APPELLANT'S BRIEF

JAMES I. MEYERSON
1790 Broadway - 10th Floor
New York, New York 10019
(212) 245-2100

Attorney for Appellant

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

CIVIL NO. 73-CV-545

JO DAVIS MORTENSON, etc., et. al.,

PLAINTIFF

vs

SYRACUSE UNIVERSITY, etc., et. al.,

DEFENDANTS

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT FROM A MEMORANDUM-DECISION and ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

NOTICE IS HEREBY GIVEN that the Plaintiff, above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum-Decision and Order of the United States District Court for the Northern District of New York, the Honorable James T. Foley presiding, which Memorandum-Decision and Order granted the Defendants' Motion to Dismiss for lack of subject matter jurisdiction or for the failure to state a claim upon which relief can be granted and which dismissed the Plaintiff's Complaint accordingly. Furthermore the Memorandum-Decision and Order granted the Defendants' request to deny class status to this action.

The Memorandum-Decision and Order, so described, was handed down by Judge James T. Foley on ~~May 13~~, 1974 and filed with the Clerk of the United States District Court for the Northern District of New York, accordingly.

JO DAVIS MORTENSON
219 Crawford Avenue
Syracuse, New York
(315) 446-5119

FOR HERSELF

JAMES I. MEYERSON
1790 Broadway - 10th Floor
New York, New York 10019
(212) 245-2100

Attorney for Plaintiff

~~JO DAVIS~~ MORTENSON, being first duly sworn, deposes and says: On June _____, 1974, I did serve a copy of this Notice of Appeal upon the attorneys for the Defendants by mailing the same to them, postage pre-paid, first class, as follows: David Sexton, Esq., c/o Bond Schoeneck & King, One Lincoln Plaza, Syracuse, New York.

JO DAVIS MORTENSON

Sworn to and subscribed before me

this _____day of June, 1974.

NOTARY PUBLIC

My Commission Expires:_____

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

[illegible]

JO DAVIS MORTENSON, etc., et. al.,

PLAINTIFF

VS

SYRACUSE UNIVERSITY, etc., et. al.,

DEFENDANTS

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT FROM A MEMORANDUM DECISION and ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

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FORM C

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

CIVIL APPEAL PRE-ARGUMENT STATEMENT

(To be filed by appellant with Clerk of Court of Appeals and served on other parties within ten days after filing notice of appeal.)

(Attach additional sheets if space is not sufficient)

CASE TITLE (Complete)

Jo Davis Mortenson

vs

Syracuse University, etc., et. al.

APPEAL FROM DISTRICT COURT

DISTRICT ▶	N.D.N.Y.
DISTRICT COURT DOCKET NUMBER ▶	73 Civ. 545
DATE FILED IN DISTRICT COURT ▶ (MO. DAY YEAR)	12 7 73
DATE NOTICE OF APPEAL FILED ▶	6 12 74
RELATED CASE(S) ▶	73 Civ 420 Temp. No. T-3660

Is this a cross appeal: YES ☐ NO ☒

COUNSEL NAME FOR APPELLANTS: James I. Meyerson — ADDRESS: 1790 Broadway - 10th Floor, New York, New York 10019 — TELEPHONE: (212) 245-2100

FOR APPELLEES: Bond Schoeneck & King — ADDRESS: One Lincoln Plaza, Syracuse, New York — TELEPHONE: (315) 422-0121

(Check One Box Only)

NATURE OF SUIT

CONTRACT	TORTS	CIVIL RIGHTS	FORFEITURE/PENALTY	PROPERTY RIGHTS
☐ INSURANCE	PERSONAL INJURY	☐ VOTING	☐ AGRICULTURE	☐ COPYRIGHT ☐ TRADEMARK
☐ MARINE	☐ AIRPLANE	☒ JOBS	☐ FOOD & DRUG	☐ PATENT
☐ MILLER ACT	☐ ASSAULT, LIBEL & SLANDER	☐ ACCOMMODATIONS	☐ LIQUOR LAWS	
☐ NEGOTIABLE INSTRUMENT	☐ FEDERAL EMPLOYERS' LIABILITY	☐ WELFARE	☐ R.R. & TRUCK	
☐ RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	☐ MARINE	☐ OTHER CIVIL RIGHTS	☐ AIR LINE REGS	
☐ OTHER CONTRACT	☐ MOTOR VEHICLE	PRISONER PETITIONS	☐ OTHER	
REAL PROPERTY	☐ OTHER PERSONAL INJURY	☐ VACATE SENTENCE (2255)	LABOR	
☐ CONDEMNATION	PERSONAL PROPERTY	☐ HABEAS CORPUS	☐ FAIR LABOR STANDARDS	
☐ FORECLOSURE	☐ FRAUD	☐ MANDAMUS	☐ LABOR/MGMT. RELATIONS	
☐ RENT LEASE & EJECTMENT	☐ OTHER PERSONAL PROPERTY DAMAGE	☐ CIVIL RIGHTS	☐ LABOR/MGMT. REPORTING & DISCLOSURE ACT	
☐ TORTS TO LAND		☐ PAROLE BRD REVIEW	☐ RAILWAY LABOR ACT	
☐ ALL OTHER REAL PROPERTY			☐ OTHER LABOR LITIGATION	

OTHER STATUTES	
☐ STATE REAPPORTIONMENT	☐ AGRICULTURAL ACTS
☐ ANTI TRUST	☐ ECONOMIC STABILIZATION ACT
☐ BANKRUPTCY TRUSTS	
☐ BANKS AND BANKING	☐ ENVIRONMENTAL MATTERS
☐ COMMERCE ICC RATES ETC	☐ CONSTITUTION & ANY STATE STATUTES
☐ DEPORTATION	☐ MORAL TITLE III
☐ SELECTIVE SERVICE	
☐ SECURITIES COMMODITIES EXCHANGE	☐ OTHER STATUTORY ACTIONS
☐ SOCIAL SECURITY	
☐ TAX SUITS	

METHOD OF DISTRICT COURT DISPOSITION

Judgment before trial:		Prisoner petition:	
Summary Judgment	☐	Granted	☐
Dismissal	☒	Denied	☐
Other	☐		
Judgment during or after trial:		Injunction:	
Court trial	☐	Granted	☐
Jury trial	☐	Denied	☐
During trial	☐		
Appeal from order:		Damages:	
Preliminary injunction	☐	Granted	☐
Class action	☐	Amount	
Amend answer	☐	$	
Enforce settlement	☐	Denied	☐
Counsel fees	☐	Other relief (specify)	
Stay	☐		
Other	☐		

APPROXIMATE SIZE OF RECORD ▶ Pleadings, NUMBER OF EXHIBITS ▶ 0 — HAS TRANSCRIPT BEEN MADE? YES ☐ NO ☒

BRIEF DESCRIPTION OF NATURE OF CASE AND RESULT BELOW:

This case concerns itself with sex discrimination in professional employment at Syracuse University. The matter was dismissed for lack of jurisdiction under both Title VII and the Fourteenth Amendment and 42 U.S.C. § 1983 in conjunction with 28 U.S.C. § 1343. In addition, the class action aspects of the case were dismissed. The appeal adaresses itself to the jurisdictional issue, primarily, as well as the appropriateness of the class action designation of the case.

ISSUES PROPOSED TO BE RAISED ON APPEAL:

In addition, this appeal addresses itself to the propriety of the named Defendants as defendants and the ability of the Plaintiff to challenge across the board discrimination, because of sex, in the employment policies and practices of the Defendant University as such relate to professional positions (faculty & administrative).

I, Attorney for the Appellant, hereby certify that satisfactory arrangements have been made with the court reporter for payment of the cost of the transcript (FRAP 10 (b)). (Check one box)

I ☐ (1) have already ordered the transcript to be prepared OR

☐ (2) will order it to be prepared at the time required by the Staff Counsel in the implementation of the Civil Appeals Management Plan.

COUNSEL'S SIGNATURE James I. Meyerson — DATE 7/16/74

SECOND CIRCUIT

TRANSCRIPT INFORMATION
CIVIL APPEAL

To be completed by counsel for appellant in civil appeal from district court within ten days after filing notice of appeal.

DISPOSITION OF COPIES: (1) to Clerk of the Court of Appeals; (2) and (3) to Court Reporter; (4) Counsel for Appellee (5) retained by Counsel for Appellant.

THIS SECTION TO BE COMPLETED BY COUNSEL FOR APPELLANT

CASE TITLE	DISTRICT	DOCKET NUMBER
Jo Davis Mortenson vs Syracuse University, etc., et. al.	N.D.N.Y.	73 Civ 545
	JUDGE James T. Foley	APPELLANT Jo Davis Mortenson
	COURT REPORTER _____	COUNSEL FOR APPELLANT James I. Meyerson 1790 Broadway - 10th Floor New York, New York 10019

TRANSCRIPT ORDER
Must be completed

DESCRIPTION OF PROCEEDINGS FOR WHICH TRANSCRIPT IS REQUIRED (INCLUDE DATES)

NO TRANSCRIPT because the case was dismissed without an evidentiary hearing.

I am ordering a transcript.

I am not ordering a transcript.
Reason:

☐ Daily copy is available.
☒ Other. Attach explanation.

METHOD OF PAYMENT ☐ FUNDS ☐ CJA VOUCHER (CJA 21)

☐ PREPARE TRANSCRIPT OF PRE-TRIAL PROCEEDINGS
☐ PREPARE TRANSCRIPT OF TRIAL
☐ PREPARE TRANSCRIPT OF OTHER POST-TRIAL PROCEEDINGS
☐ PREPARE (Other: Specify)

DELIVER TRANSCRIPT TO: (NAME, ADDRESS, TELEPHONE)

I certify that I have made satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)). I understand that unless I have already ordered the transcript, I shall order its preparation at the time required by the Civil Appeals Management Plan, F.R.A.P. and the local rules.

James I. Meyerson

COUNSEL'S SIGNATURE	DATE
James I. Meyerson	7/18/74

COURT REPORTER ACKNOWLEDGEMENT
To be completed by court reporter. Return one copy to clerk, U.S. Court of Appeals.

DATE ORDER RECEIVED	ESTIMATED COMPLETION DATE	ESTIMATED NUMBER OF PAGES

SIGNATURE OF COURT REPORTER	DATE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JO DAVIS MORTENSON, on behalf of herself and on behalf of all persons similarly situated,

Plaintiffs,

-vs-

73-CV-545

SYRACUSE UNIVERSITY, an educational corporate entity, DR. MELVIN EGGERS, Chancellor, DR. CLIFFORD L. WINTERS, Vice-Chancellor, DR. JOSEPH BRAYANT, JR., former Chairman of the Department of English, Syracuse University, DR. WALTER SUTTON, Chairman of the Department of English, Syracuse University, ARTHUR HOFFMAN, PAUL THEINER, RANDALL BRUNE, as standing members of the Executive Committee of the Department of English, Syracuse University and members of the Tenure Committee of the Department of English, Syracuse University, the EXECUTIVE COMMITTEE of the Department of English, Syracuse University, and the TENURE COMMITTEE, Department of English, Syracuse University,

Defendants.

APPEARANCES:

OF COUNSEL:

JAMES I. MEYERSON
Attorney for Plaintiff
1790 Broadway - 10th Floor
New York, New York 10019

BOND, SCHOENECK & KING
Attorneys for Defendants
One Lincoln Center
Syracuse, New York 13202

WILLIAM F. FITZPATRICK
DAVID N. SEXTON

JAMES T. FOLEY, D. J.

MEMORANDUM-DECISION and ORDER

Plaintiff has commenced this action against defendants, Syracuse University, et al., alleging that she was terminated from her position as Assistant Professor in the Dep rtment of English, effective June 1971, allegedly as a result of Syracuse University's policy to discriminate against women. It is undisputed that notification of the termination, by letter, was given the plaintiff in October 1969, to be effective in June 1971. Additionally, plaintiff seeks to represent the class of women faculty members

who have been subjected to this discrimination, and thus a determination that the action is a suitable one to be maintained as a class action. F. R. Civ. Proc. 23(c)(1). Defendants move in a single motion to dismiss this action for lack of jurisdiction both over the subject matter and person; for failure to state a claim upon which relief can be granted; to strike certain allegations in the complaint; and for determination that the action should not proceed as a class action.

The complaint alleges jurisdiction under 28 U.S.C. § 1343, 42 U.S.C. §§ 2000e et seq., 42 U.S.C. §§ 1983 and 1985 and Executive Order 11246 (1965), 3 C.F.R. 1964-1965 Comp., p. 339, as amended, and Executive Order 11375 (1967) 3 C.F.R. 1966-1970 Comp., p. 684. Declaratory and injunctive relief as well as money damages are sought. In addition to the relief sought in this action, plaintiff has sought relief from other authorities, e.g., Syracuse University Senate (4/71), the Chancellor, the New York State Division of Human Rights (filed 12/70), and with the United States Equal Employment Opportunity Commission (EEOC; 1st #TBU4-0167 filed 9/24/73; 2nd #TBU4-0352 filed 9/30/73); some of these proceedings are still pending, but will not affect this decision.

In my judgment, there is no subject matter jurisdiction of the claims alleged in the complaint and failure, further, to state a claim therein upon which relief can be granted even with consideration of the affidavits submitted in support of questions that might be presented properly for federal consideration. Rosado v. Wyman, 397 U.S. 397, 403 n.3 (1970).

It is by now axiomatic that jurisdiction pursuant to 28 U.S.C. § 1343 in conjunction with 42 U.S.C. § 1983 and § 1985 cannot be asserted against a non-public defendant unless some form of "state action" is involved in the specific acts of discrimination that are alleged. This element that is essential must be something more than a general financial or legal relationship, i.e., the state must exert

direct influence or control in the activity. Recent opinion of both the Supreme Court and the Court of Appeals, Second Circuit, have rejected claims of State action based upon incidental contacts not causally related to the specific violation of civil rights. Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); see also Shirley v. State Nat'l Bank, _____F. 2d _____, slip op. 1773 (2d Cir. Feb. 14, 1974); Bond v. Dentzer, _____F. 2d _____, slip op. 2093 (2d Cir. March 13, 1974); McDonald v. National Collegiate Athletic Ass'n., 370 F. Supp. 625, 630 (C.D. Calif. 1974). The most recent pronouncement of the Second Circuit lists five factors which should be searched for. The Court said "each of these factors is material; no one factor is conclusive."

> A review of the "state action" case law suggests five factors which are particularly important to a determination of "state action": (1) the degree to which the "private" organization is dependent on governmental aid; (2) the extent and intrusiveness of the governmental regulatory scheme; (3) whether that scheme connotes government approval of the activity or whether the assistance is merely provided to all without such connotation; (4) the extent to which the organization serves a public function or acts as a surrogate for the State; (5) whether the organization has legitimate claims to recognition as a "private" organization in associational or other constitutional terms.

Jackson v. The Statler-Hilton Foundation, _____F. 2d _____, _____; slip op. 2741, 2750 (Decided Dec. 4, 1973; Revised April 5, 1974).

These five factors, when applied to the instant case in their proper context, in my judgment, reveal in the circumstances upon which this action is based no state involvement present to support claims under §§ 1983 and 1985. Plaintiff, in a somewhat rote argument, simply declares that since Syracuse University performs a public function of education in the state, evinced by its compliance with certain laws (see e.g., N.Y. Ed. Law §§ 218 et seq.) and receives state financial assistance (never exceeding 5% of the university budget), all the acts of the University are really State

controlled. This analysis is very weak because these allegations have been made and specifically rejected from my reading of them by the recent cases of the Court of Appeals, Second Circuit. The furnishing of higher education per se is not a "public function" within the concept of state action. Powe v. Miles, 407 F. 2d 73, 81 (2d Cir. 1968). And a small amount of aid given to the private university (here less than 5% annually) does not significantly alter the lack of state involvement. Grafton v. Brooklyn Law School, 478 F. 2d 1137, 1142 (2d Cir. 1973); Grossner v. Trustees of Columbia University, 287 F. Supp. 535, 547-549 (S.D.N.Y. 1968).

Syracuse University from the record herein is essentially a "private organization" which is not dependent on state aid to any significant degree and New York State does not regulate or approve its tenure procedures in any meaningful way.

With specific regard to § 1985, I find that not only is any state action lacking, but also that the complaint fails to allege in reasonably acceptable form any conspiracy. Furumoto v. Lyman, 362 F. Supp. 1267, 1275 (N.D. Calif. 1973). Although plaintiff has named the Chancellor, members of the Faculty Senate and Department of English, her allegations, even when construed liberally, merely cite these individuals for failing to perceive and rectify her complaints insofar as they reviewed her appeals in their official capacities. This falls far short of participation in the alleged discrimination which is the subject of the complaint. Finally, plaintiff requests that even if this Court should doubt the presence of state action, a hearing should be held under the rationale of Coleman v. Wagner College, 429 F. 2d 1120 (2d Cir. 1970) and Braden v. University of Pittsburgh, 477 F. 2d 1 (3rd Cir. 1973). However, to my mind, these cases are easily distinguishable. Both of these cases involved obvious and direct state participation in some phase of the administration of the university which was also the subject of the complaints therein. In Coleman, it was a direct

attempt by the New York State Governor and Legislature requiring private universities to promulgate student disciplinary codes and in Braden it was the requirement that certain public officials be designated Trustees of the University of Pittsburgh, including the Governor of the State, Superintendent of the Department of Public Instruction and the Mayor of Pittsburgh, as well as provision for the appointment of other trustees by the Governor and others. There is nothing even approximating this type of state involvement to be ascertained from plaintiff's complaint or supporting papers. Again, what is more important is that in both Braden and Coleman as well as Jackson v. The Statler-Hilton Foundation, supra, the claimed state action was causally related to the allegations in the complaint. To wit: Whoever sat on the board of trustees would determine the policies of the university in Braden, and in Coleman state legislation mandating a disciplinary code might very well affect a student subject to it. Nothing alleged by plaintiff even alludes to how New York State might affect tenure decisions of Syracuse University.

The remaining claims of jurisdiction, under the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. and Executive Orders 11246 and 11375, simply from my review do not confer jurisdiction under the allegations contained in the complaint. Bradford v. Peoples Natural Gas Company, Inc., 60 F.R.D. 432, 436 (W.D. Pa. 1973).

I find that the time of the alleged act of discrimination at the latest is June 1971, the effective date of termination between plaintiff and Syracuse University. Prior to March 24, 1972, 42 U.S.C. § 2000e - 1, specifically exempted an "educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution," and thus this alleged act of discrimination being prior to March 24, 1972 could not come within the ambit of this Act. Cohen v. Chesterfield County School Board, 474 F. 2d 395, 395 n. 1 (4th Cir. 1973), rev'd on other grounds 94 S. Ct. 791 (1974), [cert. gr. 411 U.S. 947 (1973)]

Johnson v. University of Pittsburgh, 359 F. Supp. 1002, 1007 (W.D. Pa. 1973); Hill-Vincent v. Richardson, 359 F. Supp. 308 (N.D. Ill., E.D. 1973); Walker v. Kleindienst, 357 F. Supp. 749 (D.C. 1973).

The lack of retroactive application is not the only bar to jurisdiction under the terms of § 2000e. Plaintiff has also failed to meet the time limits prescribed for filing her complaint with the EEOC. This failure is adequately explained in a letter from Lloyd G. Bell, District Director, EEOC (September 27, 1973), appended to plaintiff's affidavit of March 18, 1974. A timely filing is a jurisdictional prerequisite to a suit in a United States District Court. Choate v. Caterpillar Tractor Company, 402 F. 2d 357, 359 (7th Cir. 1968); Austin v. Reynolds Metals Company, 327 F. Supp. 1145, 1148 (E.D. Va. 1970); Williams v. Local No. 19, Sheet Metal Wkrs. Int'l Ass'n, 59 F.R.D. 49, 52 (E.D. Pa. 1973); Washington v. Aerojet-General Corp., 282 F. Supp. 517, 519-520 (C.D. Calif. 1968). These time limitations are specific and clear and failure to follow them defeats later suit under the Act.

The final issue which must be addressed is plaintiff's attempt to characterize her charges against defendants as "continuing" acts of discrimination, and to represent a class in this litigation. For if either purpose can be accomplished, it would be impossible to say that any particular act of discrimination took place at any particular time in relation to the statutory time periods involved. The acts, if continuing, would run beyond time period endings and if class related could involve class members against whom the contended common acts of discrimination took place at different times. Thus objections based on the lack of retroactivity and the lack of timeliness would be pointless in that context. See Macklin v. Spector Freight Systems, Inc., 478 F. 2d 979, 985-987 (D.C. Cir. 1973). Bartmess v. Drewrys, U.S.A., Inc., 444 F. 2d 1186, 1188 (7th Cir. 1971), cert den. 404 U.S. 939 (1971); Bowie v. Colgate-Palmolive Company, 416 F. 2d 711 (7th Cir. 1969); Oatis v. Crown Zellerbach Corporation, 398 F. 2d

496, 499 (5th Cir. 1968); Tippett v. Liggett & Meyers Tobacco Company, 316 F. Supp. 292 (M.D. N.C. 1970).

However, in my judgment, a job termination or layoff without more such as occurred here cannot be considered a continuing violation. Cox v. United States Gypsum Company, 409 F. 2d 289, 290-291 (7th Cir. 1969); Hutchings v. U.S. Industries, Inc., 309 F. Supp. 691, 693 (E.D. Texas 1969), rev'd and remanded on other grounds, 428 F. 2d 303 (5th Cir. 1970); see also Gordon v. Baker Protective Services, Inc., 358 F. Supp. 867, 869 (N.D. Ill. 1973); Sciaraffa v. Oxford Paper Company, 310 F. Supp. 891, 896 (D. Maine, S.D. 1970); Culpepper v. Reynolds Metals Company, 296 F. Supp. 1232, 1235 (N.D. Ga. 1969), rev'd and remanded on other grounds, 421 F. 2d 888 (5th Cir. 1970).

And, in terms of the class action, it is questionable whether plaintiff, who is no longer associated with Syracuse University, can represent a class of women still employed there. See Hansberry v. Lee, 311 U.S. 32, 44-45 (1940); Norman v. Connecticut State Board of Parole, 458 F. 2d 497 (2d Cir. 1972); Carroll v. Associated Musicians of Greater New York, 316 F. 2d 574 (2d Cir. 1963). But, there is no question that the class action device may not be used to circumvent the timeliness of actions under the Civil Rights Act of 1964 under these circumstances. Hecht v. Cooperative for Amer. Relief Everywhere, Inc., 351 F. Supp. 305, 310 (S.D.N.Y. 1972); Torockio v. Chamberlain Mfg. Co., 328 F. Supp. 578, 580 (W.D. Pa. 1971), remanded 456 F. 2d 1084 (3rd Cir. 1972); compare, Kohn v. Royall, Koegel & Wells, 59 F.R.D. 515 (S.D.N.Y. 1973), appeal dismissed, slip op. 3243 (2d Cir. 5/3/74).

A final brief word concerning plaintiff's second filing of a charge with the EEOC against the same defendants, Syracuse University et al. (plaintiff's affidavit, March 29, 1974). Apparently, plaintiff wishes this second Notice of the Right to Sue, issued considerably after the filing of this complaint (12/7/73), pursuant to her first Notice (9/27/73), to cure the untimeliness and lack of retroactivity

discussed previously. Of course, a second Notice, issued after the filing of an action, could not possibly become nunc pro tunc giving this Court jurisdiction where none had existed at the time of filing. Additionally, the letters accompanying the two Notices from Mr. Lloyd G. Bell seem to treat each Notice as separate complaints having distinct case numbers. Plaintiff's contention that the second Notice is merely an amendation or continuation of the first is questionable in terms of the facts of the case and the treatment of these claims by the EEOC; it is unacceptable to me. See Miller v. International Paper Co., 408 F. 2d 283 (5th Cir. 1969); also 29 C.F.R. § 1601.25(c).

Although not specifically raised by plaintiff, I find that the decisions of the Court of Appeals, Fifth Circuit, in Hutchings v. United States Industries, Inc., supra, and Culpepper v. Reynolds Metals Company, supra, which allowed the tolling of certain time periods under Title VII when plaintiff first sought private settlement of his complaint through his contractual grievance remedies, would not cure the untimeliness as presented by the instant case. Plaintiff did file a petition to the University Senate Hearing Panel in April 1971 and their decision, if it can be considered a grievance procedure within the meaning of these cases, was January 19, 1973. However, this procedure was not invoked as a first measure of private grievance settlement in light of plaintiff's prior petition to the New York State Division of Human Rights in December 1970, nor would it, in any event of tolling, meet the 210 day time limit for filing a complaint with the EEOC since plaintiff's first complaint with the EEOC was not filed until September 24, 1973. I thus find these cases inapposite to ameliorate the untimeliness presented here, but the point is somewhat academic in terms of the exclusion of educational institutions from coverage under Title VII at the time of the discriminatory acts alleged in the complaint, i.e., all being prior to the March 24, 1972 amendment.

In conclusion, realizing that the "role of the prophet is precarious at best" on questions of state action, I find there is no state involvement alleged in the complaint sufficient to confer jurisdiction under either 42 U.S.C. § 1983 or § 1985. See Tucker v. Maher, _____ F. 2d _____, _____; slip op. 3275, 3285 (2d Cir. 5/7/74). The allegations in the complaint are clearly not cognizable under the Civil Rights Act of 1964 since they concern an educational institution and all occurred prior to March 24, 1972. Their untimely assertion would deprive this Court of jurisdiction, in my judgment, in any event. Therefore, defendants' motion to dismiss for lack of subject matter jurisdiction or for failure to state a claim is granted and plaintiff's complaint is hereby dismissed. The request of the defendants to deny class action status is granted; the request in the defendants' motion to strike certain allegations of the complaint is dismissed as moot in view of the dismissal of the complaint.

It is so Ordered.

Dated: May 13, 1974

Albany, New York

James T. Foley

UNITED STATES DISTRICT JUDGE

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1 WEST GENESEE STREET
BUFFALO, NEW YORK 14202
(716) 842 - 5170

Re:

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

In Case No. TBU4 0352 before the Equal Employment Opportunity Commission, United States Government.

Jo Davis Mortenson

v.

Syracuse University

YOU ARE HEREBY NOTIFIED THAT:

WHEREAS, this Commission has not filed a civil action with respect to your charge as provided by section 706(f)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq; and,

WHEREAS, this Commission has not entered into a conciliation agreement to which you are a party;

THEREFORE, pursuant to s706(F) of Title VII, you may within 90 days of your receipt of this Notice, institute a civil action in the United States District Court having jurisdiction over your case.

Should you decide to commence judicial action, you must do so within 90 days of the receipt of this letter or you will lose your right to sue under Title VII.

If you are not represented by counsel and you are unable to obtain counsel, the Court may in its discretion, appoint an attorney to represent you.

Should you have any questions concerning your legal rights or have any difficulty filing your case in court, please contact Mr. Ronald Copeland of our Regional Office at (212) 264-3644.

LLOYD G. BELL, District Director

DATE 8/27/74

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

CIVIL NO._____

JO DAVIS MORTENSON, on behalf of herself and on behalf of all persons similarly situated,

PLAINTIFFS

-vs-

SYRACUSE UNIVERSITY, an educational corporate entity, DR. MELVIN ECGERS, Chancellor, DR. CLIFFORD L. WINTERS, Vice-Chancellor, DR. JOSEPH BRAYANT, JR., former Chairman of the Department of English, Syracuse University, DR. WALTER SUTTON, Chairman of the Department of English, Syracuse University, ARTHUR HOFFMAN, PAUL THEINER, RANDALL BRUNE, as standing members of the Executive Committee of the Department of English, Syracuse University and members of the Tenure Committee of the Department of English, Syracuse University, the EXECUTIVE COMMITTEE of the Department of English, Syracuse University, and the TENURE COMMITTEE, Department of English, Syracuse University,

DEFENDANTS

COMPLAINT
CLASS ACTION

INTRODUCTORY STATEMENT

1. This is an action brought to redress the maintenance and perpetuation of a pattern and practice of discrimination against women, solely because of their sex, in the hiring of women to, the promotion of and awarding of tenure to women in, and the termination of women from, positions on the faculty at Syracuse University, in contravention of the Fourteenth Amendment to the United States Constitution and the various acts of Congress which prohibit discrimination based on sex. The Plaintiff, a woman, prosecutes this action on behalf of herself and all other persons similarly situated and, in this regard, seeks declaratory, injunctive and monetary relief.

JURISDICTIONAL STATEMENT

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1343 (1), (2), (3) and (4) in conjunction with 42 U.S.C. §§2000e et. seq., as amended, (Title VII of the Civil Rights Act of 1964) 42 U.S.C. §§1983 and 1985, (the Civil Rights Act of 1871) the Fourteenth Amendment to the United States Constitution, and Executive Order 11246 (signed September 24, 1965, effective on October 24, 1965, 3 C.F.R. 339) as amended by Executive Order 11375 (signed October 13, 1967, effective in part on November 12, 1967 and in part on October 14, 1968), this being an action to redress the deprivation of the constitutional and civil rights of individuals because of discrimination based on sex. Jurisdiction is also invoked in conjunction with the Declaratory Judgment Act (28 U.S.C. §§2201 and 2202), this being an action for declaratory as well as injunctive and monetary relief.

PARTIES

3. Plaintiff, JO DAVIS MORTENSON is a female citizen of the United States presently living in Syracuse, New York; she was employed in 1966 by Syracuse University as an Assistant Professor in the Department of English, School of Liberal Arts. Plaintiff has both a Masters and Ph.D. in English Literature having obtained the same from Pennsylvania State University. She obtained a Bachelor of Arts degree in drama from the University of North Carolina in Greensboro. She was and is a highly qualified individual for the faculty position of Assistant Professor in the Department of English at Syracuse University; and but for the fact that she is a woman, she would not have been terminated from her position and otherwise would have/in due course been awarded tenure on the faculty at Syracuse University.

4. Plaintiff Mortenson brings this action on behalf of herself and on behalf of all other women who, because of their sex, and solely because of their sex, have been, are being, and will continue to be denied access and retention to, and promotions and tenure in, faculty positions at Syracuse University in contravention of the United States Constitution and the various acts of Congress which prohibit discrimination based on sex.

5. The necessary requisites of a proper class action are present, to wit: Plaintiff brings this action as a class action pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure on her own behalf and on behalf of all persons similarly situated. As to the class as set forth herein (1) they are so numerous that joinder of all its members is impracticable; (2) there are questions of law and fact common to the class and its members; (3) the claims of the Plaintiff are typical of the claims of class and its members; (4) the Plaintiff will fairly and adequately protect the interest of the class and its members; (5) the Defendants acted or refused to act on grounds generally applicable to the class and its members, thus making appropriate final injunctive relief with respect to the class as a whole; (6) questions of law and fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this suit.

6. Defendant, SYRACUSE UNIVERSITY, is a private institution of higher education which is subdivided into various academic colleges and departments therein. While it is private in nature, it receives significant sums of money to carry out its programs from the State of New York, and its departments and subdivisions, and the government of the United States; and it receives significant sums of money from the afore-mentioned governmental entities

and their departments and subdivions for services provided by the Defendant University to them. A substantial sum of such monies goes toward providing tuition payments of students attending said University, its colleges and departments; and the salaries, or parts thereof, of faculty members teaching at said University, its colleges and departments.

7. Defendant, DR. MELVIN EGGERS, is the Chancellor of Syracuse University and is the Chief Administrative Officer thereof. Among other things, he is responsible for carrying out the policies of the University as they are formulated by its Board of Trustees, including those policies related to the hiring, firing and promotion of faculty personnel. In so doing he has the ultimate responsibility to assure that the hiring, firing and promotion of faculty personnel are done on a racially and sexually non-discriminatory basis; and, in fact, he has the ultimate responsibility to assure that the University's Affirmative Action Program and its goals, designed to increase the number of racial minority and female persons on the faculty of the University, are being implemented and met.

8. Defendant, DR. CLIFFORD WINTERS, is Vice-Chancellor of Syracuse University and Chairman of the Affirmative Action Committee of said University. Among other things, he is responsible for assisting the Chancellor of Syracuse University in carrying out the policies of the University as they are formulated by its Board of Trustees, and particularly those policies related to the University's Affirmative Action Program and goals, which program and goals are designed to increase the number of racial minority and female persons on the faculty of the University.

9. Defendant, DR. JOSEPH BRYANT, JR., is former Chairman of the Department of English in the School of Liberal Arts, at Syracuse University. In that capacity he was responsible for assisting the

Chancellor and Vice-Chancellor of Syracuse University and other subordinate officials thereof in the implementation of the University's Affirmative Action Program and the attainment of its goals insofar as the particular Department of English and School of Liberal Arts, Syracuse University, is concerned.

9a. Defendant,DR. WALTER SUTTON, is Chairman of the Department of English in the School of Liberal Arts at Syracuse University. In that capacity he is responsible for assisting the Chancellor and Vice-Chancellor of Syracuse University and other subordinate officials thereof in the implementation of the University's Affirmative Action Program and the attainment of its goals insofar as the particular Department of English is concerned.

9b. Defendant, EXECUTIVE COMMITTEE,Department of English, Syracuse University, is a committee of faculty personnel who have the responsibility to "consult with and share in the decisions of the Chairman in all matters of policy and planning regarding salary, load, leave, recruitment, budget, and academic freedom, and in all matters involving the efficiency, standards, and reputation of the Department of English." Its membership is composed of two elected members, one appointed member and three standing members, to wit: the Director of Graduate Studies, the Director of Upper Division Studies, and the Director of Lower Division Studies.

9c. Defendants ARTHUR HOFFMAN, PAUL THEINER and RANDALL BURNE, are presently the standing members of the Executive Committee of the Department of English, Syracuse University, and, along with the appointed and elected members, are responsible for carrying out the duties of the Executive Committee, as heretofore set forth; in addition they hold positions on the Tenure Committee, Department of English, Syracuse University.

9d. Defendant, TENURE COMMITTEE of the English Department, Syracuse University is a committee of faculty personnel composed of all English Department members who have tenure and/or who have received a departmental recommendation for tenure in the previous year. Said Committee is responsible for determining action on matters of reappointment and tenure.

ALLEGATIONS

10. In September, 1966, Plaintiff Mortenson was employed by Syracuse University, School of Liberal Arts, Department of English, as an Assistant Professor. At that time, the Chairman of the Department of English was Doctor James Elson.

11. At the time the Plaintiff was hired as an Assistant Professor in the Department of English, Doctor Elson assigned her to teach courses on both the lower and upper level undergraduate level.

12. The Plaintiff taught at such levels from 1966 through 1968 without being the recipient of any complaints with respect to her teaching ability. During that period, the Plaintiff also received salary raises attendant to her competent performance as an Assistant Professor in the Department of English, School of Liberal Arts, Syracuse University.

13. In 1968, Defendant Joseph Bryant replaced the aforementioned James Elson as Chairman of the Department of English, School of Liberal Arts, Syracuse University and immediately assigned Plaintiff to teach only lower level undergraduate courses. The Plaintiff did not object to the assignment at that time but she perceived Dr. Bryant's decision to restrict her to such courses on a permanent basis while assigning male faculty personnel, without doctoral degrees (which the

Plaintiff possessed) or publication (which the Plaintiff possessed) to graduate level courses, to be a demotion of sorts.

14. Prior to Mr. Bryant's appointment as Department Chairman, Dr. Elson originally assigned the Plaintiff to a three preparation 5-day week and subsequently to a two preparation 2-day week. In the spring of 1969, Dr. Bryant advised the Plaintiff that he was changing her assignment to a 5-day, 3 preparation week for the fall semester of the 1969-70 academic year. He stated that he was doing this because only full professors could have a 2-day week. He added that he was giving all of his assistant professors a 5-day week. Upon information and belief this was not done to all the assistant professors in the Department.

15. After his appointment as Chairman of the Department of English, Defendant Bryant held a meeting in the spring of 1969 involving the Plaintiff and three male faculty personnel who came on the staff of the Department of English at the same time as the Plaintiff did.

16. One of the aforementioned men was an Assistant Professor, like the Plaintiff, while the other two men held the position of Lecturer.

17. From the time of Doctor Bryant's arrival in 1968 and throughout the period up to her termination from the Defendant University, effective June 1, 1971, Plaintiff was the only female Assistant Professor in the Department of English, School of Liberal Arts, Syracuse University. Moreover, the English Department has not hired, retained, and granted tenure to any woman in any professorial rank in twenty (20) years. Finally, upon information and belief, from 1966 to date, the English Department has never terminated a male faculty member having only three years of full time teaching service. Upon information and belief, it has regularly extended and continues to extend male faculty personnel with-

out doctoral degrees or publications into their fifth and sixth years of full time teaching service before making a decision on the tenure of those individuals.

18. During the meeting, Doctor Bryant advised the Plaintiff and other persons present that they had two years to demonstrate their professional competence; and that the decision concerning the granting of tenure to them would be based on this demonstration. He also explained the four areas which were evaluated in terms of making the tenure decision. These areas, in order of their importance, according to Defendant Bryant, were the holding of a Ph.D. degree, publication, teaching, and University Professional involvement.

19. In October, 1969, meetings of the tenured staff were held. Within approximately one (1) week after the aforementioned meetings, Defendant Bryant met with the Plaintiff, Peter Mortenson and Joseph Roesch, in private, and advised them tenure had not been recommended for any of them. At the same time, Defendant Bryant told Mr. Morton that the voting members of the English Department (the tenured staff) were favorably inclined toward him and that he would be reconsidered the following year.

20. About three weeks later, Mr. Mortenson and Mr. Morton received essentially identical letters from Defendant Bryant, which they showed to the Plaintiff and which indicated that they would be reconsidered the following year. By letter, Mr. Roesch and the Plaintiff were notified that they would be terminated effective June, 1971.

21. Certain voting members of the Department, upon hearing of these events, indicated to Peter Mortenson (who was not at that time Plaintiff's husband) that they had not understood the decision concerning the Plaintiff, Mr. Roesch, Mr. Mortenson,

and Mr. Morton to have been final; it was the understanding of these individuals that the discussion concerning the aforementioned was simply an informal annual assessment regarding non-tenured staff and not a final decision.

22. On October 8, 1970, Plaintiff received a memorandum in herUniversity mail box stating essentially that candidates for tenure should update their dossiers and include pertinent information concerning their teaching, scholarship, and University and Community service. Since the Plaintiff's name was typed in the upper left hand corner of this memorandum, Plaintiff felt that it was unmistakably meant for her; and, therefore, it demonstrated to her, again, that the previous report of the voting members' intentions had been misrepresented. Within approximately one week of that time, Defendant Bryant told Mr. Mortenson, Plaintiff's husband, that the Plaintiff did not need to submit an updated summary because the Department could not grant tenure to a husband and wife. Defendant Bryant concurrently told the Executive Committee of the English Department, Syracuse University, that because the Plaintiff was fired, her salary would be used to extend the one year appointment of a male faculty member who at that time had neither a doctoral degree nor any publications.

23. However, shortly thereafter, Plaintiff submitted to the secretary of the English Department, Syracuse University, an updated summary of her teaching experience, scholarship and University Committee Service, as had been directed on October 8, 1970.

24. On November 3, 1970, Dr. Bryant called the Plaintiff into his office and confirmed the 1969 decision not to recommend tenure for her; and reaffirmed that her appointment was terminated as of June 1, 1971. Plaintiff questioned the decision and Defendant Bryant told her that, in terms of making a decision, in order of their importance, were her (1) professional activities, (2) publications, and (3) teaching ability. He stated that the Plaintiff's publications were not strong enough and that she did not have any professional activities. Defendant Bryant further explained that "talks" counted most; he appeared to equate "talks" with publications. Plaintiff Mortenson questioned Defendant Bryant's comments; and then he told the Plaintiff that she did not have any ideas. He did not clarify this statement.

25. Upon information and belief, Mr. Donald Morton was notified in November, 1970, that he had received another one year extension with respect to a new consideration of his tenure qualifications. Mr. Joseph Roesch was notified that tenure had been denied and that he was being given an extension of employment until June, 1972. In the fall of 1971 a motion was made to reopen consideration of his tenure again.

26. Plaintiff fulfilled more of the tenure qualifications than either of the aforementioned men. At the time that the exceptions were made for both of the aforementioned men, but not for the Plaintiff, neither of said men held a Ph.D. degree nor had they published anything.

27. At the time that the Plaintiff was denied tenure and terminated from her faculty position with the Defendant University, while the aforementioned men were given extensions in their employment contract and/or consideration of their tenure credentials,

Plaintiff held a Ph.D. degree and had published two (2) reviews.

28. Upon information and belief, Defendant Bryant stated at the Committee of Tenured Members that he did not recommend the Plaintiff for tenure, but that, at any rate, the Plaintiff was not eligible for the same because she was married to a member of the Department and that a consideration of her tenure qualifications was "academic." Furthermore, and upon information and belief, the marital status of the candidates for tenure, as well as their sex, were discussed by the Tenure Committee.

29. Plaintiff was told by a professor, who attended the meeting of the tenure committee whereat the marital status of the tenure candidates was discussed, that the fact that Mr. Roesch, a tenure candidate, was married and that it was a difficult year to find work, was a consideration in granting him a new extension until 1972.

30. On December 10, 1970, Plaintiff filed charges with the New York State Division of Human Rights relative to the Defendants' decision to terminate her from her faculty position at the University. An investigation was conducted, a probable cause finding made, and ultimately a public hearing held. Having submitted a similar charge with to the Equal Employment Opportunity Commission, a "Notice of Right to Sue Within 90 Days" letter was issued by the EEOC on September 27, 1973.

31. Male applicants for tenure were given preferential treatment over the female Plaintiff herein; and such preferential treatment was arbitrary, capricious and sexually discriminatory, in violation of the Plaintiff's statutory and constitutional rights. Said preferential treatment in favor of male applicants

for retention and further tenure consideration and against the Plaintiff herein, was not based on objective qualifications but rather on the sex of the individual concerned.

32. At the time that the Plaintiff was denied further tenure consideration and terminated from her position, the Plaintiff was the only female Assistant Professor in the English Department. Two other females, who were appointed to the faculty before Defendant Bryant became Chairman of the English Department, were professors in the English Department at the time the Plaintiff was denied further tenure consideration and terminated from her faculty position but were in the process of retiring; and in fact, at this time have retired.

33. Upon information and belief, Defendant Bryant had never given the Recruiting Committees a single dossier from a female candidate nor had he hired a female into the Department up to the time when the Plaintiff filed her Complaint with the State Division of Human Rights. The Department had received hundreds of applications, may of which were,upon information and belief, from females.

34. Plaintiff filed charges, according to the University's grievance procedure, with the University Senate Sub-Committee on Academic freedom, Tenure and Professional Ethics, respecting her termination and denial of tenure. Said sub-committee established a hearing panel and hearings were held in 1972. The hearing panel report, issued January, 1973, found that the English Department, Syracuse University, had terminated the Plaintiff without adequate consideration and by improper procedure.

35. Defendant Sutton, the Defendant Executive Committee and the Defendant Tenure Committee have refused to take any meaningful steps to give the Plaintiff adequate consideration according to proper procedures, notwithstanding the aforementioned hearing panel report.

36. Plaintiff Mortenson, a woman, was not given further tenure consideration, as her male counterparts, and was terminated from her position as an Assistant Professor in the English Department, School of Liberal Arts, at Defendant University, notwithstanding her superior qualifications to attain tenure and notwithstanding the existence of Executive Order 11246, as amended by Executive Order 11375, which required the Defendant University, as a government contractor, to undertake affirmative action to assure that persons are employed and treated equally, without regard to race, color, religion or sex ; and to undertake affirmative action to increase its minority and female faculty personnel. Upon information and belief, the Defendant University is subject to the afore-stated Executive Orders in as much as the federal government funnels substantial monies into the Defendant University for services provided to the federal government by said University, pursuant to contracts for service; and the University is required to comply with the provisions contained therein as a condition to the continued receipt of such monies.

37. Plaintiff Mortenson, a woman, was not given further tenure consideration, as her male counterparts, and ultimately was terminated from her position as an Assistant Professor in the English Department, School of Liberal Arts, at Defendant University, notwithstanding her qualifications to attain tenure and notwithstanding the existence of Executive Order 12246, as amended by Executive Order 11375. The Defendant

University has adopted and submitted to the federal government an Affirmative Action Program designed to increase the number of women and minority persons on its faculty. Said Affirmative Action Program has not been implemented in good faith nor its goals even remotely attained; not has it been accepted by the federal government although the University ostensibly operates under it. Said Affirmative Action Program is merely a paper document drawn up to satisfy the conditions required of the Defendant University to receive federal monies and nothing more. Illustrative of this point is that, while there has been a recent general staff reduction in the Defendant University of, upon information and belief, 15.4 percent, nineteen (19) percent of the female staff was reduced. Furthermore, the absolute numbers of women declined in every division of the Defendant University, even those classifications of employees that enjoyed an appreciating work-force.

38. Further illustration of the University's sexually discriminatory policies is that, upon information and belief, in the three classifications for which comparative rank exists, i.e., faculty, clerical/technical and hourly, women are clustered at the bottom of each class. In 1972, 74.8 percent of all women employees were in the clerical/technical and hourly wage categories while only 40.8 percent of all male employees were in those categories. In a declining work-force women are in the most menial jobs, at the bottom of the wage-scale and they are sustaining the bulk of all terminations. In that regard, the rate of reduction of the male faculty, upon information and belief, is only 4.3 percent, less than one-half the rate of decline for women.

39. The Defendants employ different standards in evaluating the applications of women and men for tenure and for retention on the faculty at Syracuse University which standards are intended to and have the effect of foreclosing women from securing tenured

positions and promotions on the faculty of said University in violation of Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. §§2000(e) et. seq.) and the Civil Rights Act of 1871 (41 U.S.C. §1983), the Fourteenth Amendment to the United States Constitution and Executive Order 11246, as amended by Executive Order 11375; and which were intended to and had the effect of foreclosing the named Plaintiff herein from securing the tenured position of Assistant Professor on the faculty at the Defendant University in violation of the aforestated constitutional and statutory provisions.

40. The Defendants' standards of evaluation of tenure and unequal application applicants on the faculty at Syracuse University have the disparate and discriminatory effect of eliminating women applicants from consideration and foreclosing them from securing tenured positions and promotions on the faculty at said University in violation of Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. §§2000(e) et seq.) and the Civil Rights Act of 1871 (42 U.S.C. §1983), the Fourteenth Amendment to the United States Constitution and Executive Order 11246, as amended by Executive Order 11375; and have had such discriminatory effect on the named Plaintiff herein in violation of the afore-stated constitutional and statutory provisions.

41. The Defendent University, while ostensibly a private institution of higher learning, receives, upon information and belief, substantial monies and other benefits from the federal and state government so as to place it in such an inter-relationship with the state and federal government to make it a quasi-public institution. Upon information and belief, without those monies the Defendant University would be unable to operate efficiently and continuously and with all of its programs, activities

and services, as a "private" institution. In that regard, the Defendant University receives substantial sums of "Bundy money" from the State of New York for each degree it awards, with the sum of money being ascertained by the nature of the degree.

42. Upon information and belief, as one of the conditions to receiving the substantial federal funds which it is receiving for its programs, services, and activities, the Defendant University drew up an Affirmative Action Program to increase, among other things, its minority and female faculty representation.

43. Upon information and belief, the State of New York through the New York State Board of Regents and the Office of the State Commissioner of Education, regulate and supervise public and private education throughout the State, including institutions of higher education and specifically that of the Defendant University. Among other things, the State certifies private schools and sets appropriate minimum standards for their operations. As such the State has a substantial inter-relationship with private educational institutions in the State, such that those institutions would be unable to operate within the State of New York without that inter-relationship.

44. Plaintiff submits that the actions taken against her, as heretofore described, in denying her further tenure consideration and terminating her from her faculty position of Assistant Professor in the Department of English at the Defendant University and the acts taken and otherwise related thereto, were taken against her by the Defendant parties solely because of her sex; and were arbitrary, capricious and sexually discriminatory and without objective and rational reason. Accordingly, the Defendant parties did discriminate against the Plaintiff in violation of Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. §§2000(e) et. seq.), and 42 U.S.C. §1983 (the Civil Rights Act of 1871), the Fourteenth Amendment to the United States Constitution, and Executive Order 11246, as amended by Executive Order 11375,

45. Plaintiff submits that the actions taken against her, as heretofore described, in denying her further tenure consideration and terminating her from her faculty position of Assistant Professor in the Department of English at the Defendant University and the acts taken and otherwise related thereto, were effected by the parties collectively and in concert to deprive the Plaintiff of her statutory, civil and constitution rights, because she is a woman in violation of Title VII of the 1964 Civil Rights Act of 1871 (42 U.S.C. §§2000(e) et. seq.) the Civil Rights Act of 1871 (42 U.S.C. §1983), the Fourteenth Amendment to the United States Constitution, and Executive Order 11246, as amended by Executive Order 11375.

46. Plaintiff submits that the actions of the Defendant parties, as heretofore described, reinforce an existing pattern of discrimination by the Defendant University against women because of their sex in securing tenured faculty positions and promotions therein with said University in violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§2000(e) et. seq.), and the Civil Rights Act of 1871 (42 U.S.C. §1983), the Fourteenth Amendment to the United States Constitution and Executive Order 11246, as amended by Executive Order 11375; and the Plaintiff further submits that the actions of the Defendant parties, as heretofore described, are counter-productive to and subvert the Affirmative Action Program and goals of the Defendant University relative to increasing the number of women and minority persons in tenured positions on the faculty at said University.

47. Plaintiff has exhausted all available administrative remedies; and any further administrative recourse is futile and attendant with such delay to make the same unreasonable.

48. The Defendant parties have acted collectively and in concert to deny to the Plaintiff, solely because of her sex, her position on the faculty at the Defendant University; and such collective and concerted action had the intent and continues to have the intent of denying to the Plaintiff a position on the faculty at the Defendant University solely because of her sex and in violation of her rights under the Fourteenth Amendment to the United States Constitution, the Civil Rights Act of 1871 (42 U.S.C. §§ 1983 and 1985), Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000e, et. seq.) and the afore-stated Executive Orders.

WHEREFORE, Plaintiff respectfully prays that this Court assume jurisdiction of this matter, order a speedy trial on their merits thereof, and:

(a) Declare the actions of the Defendants to be in violation of the Plaintiff's rights as guaranteed under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§2000(e), et. seq.), the Civil Rights Act of 1871 (42 U.S.C. §§1983 and 1985), the Fourteenth Amendment to the United States Constitution, and Executive Order 11246, as amended by Executive Order 11375.

(b) Enjoin the Defendants from continuing to take actions which discriminate against women, solely because of their sex, in securing faculty positions and promotions at the Defendant University; and directing them to take positive and complete actions to implement an Affirmative Action Program to increase by 25% the number of women in tenured faculty positions at the Defendant University, including but not limited to drawing up and implementing objective evaluation criteria of applicants for attaining tenured faculty positions and promotions.

(c) Direct the Defendants to reinstate the Plaintiff to the position of Assistant Professor, with appropriate tenure considerations in the Department of English in the School of Liberal Arts, Syracuse University, forthwith, with back pay and all increments and benefits attendant thereto.

(d) Award actual and punitive damages in the amount of $100,000.00.

(e) Award costs and attorneys fees.

(f) Direct such other and further relief as is necessary for complete and just resolution of this matter.

Respectfully submitted,

JO DAVIS MORTENSON
219 Crawford Avenue
Syracuse, New York 13224
(315) 446-5119
FOR HERSELF

JAMES I. MEYERSON
1790 Broadway
10th Floor
New York, New York 10019
(212) 245-2100
Attorney for Plaintiff

V E R I F I C A T I O N

JO DAVIS MORTENSON, the Plaintiff in the foregoing action, being first duly sworn, deposes and says:

1. I am the Plaintiff in the foregoing action.

2. I have read the foregoing complaint and understand its contents.

3. The facts contained therein are true except for those things stated upon information and belief and as to those things stated on information and belief, I believe the same to be true.

4. I shall represent the class of persons alleged to be adversely affected by the actions and policies complained of herein to the best of my ability and I shall not compromise the members' interests for my interests, the interests being substantially the same.

_____

JO DAVIS MORTENSON

Sworn to and subscribed before me

this _____day of _____, 1973

_____

NOTARY PUBLIC

My Commission Expires:_____

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

CIVIL NO. _____

JO DAVIS MORTENSON, etc., et. al.,

PLAINTIFFS

vs

SYRACUSE UNIVERSITY, etc., et. al.,

DEFENDANTS

COMPLAINT

JO DAVIS MORTENSON
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Attorney for Plaintiff

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

CIVIL NO. 73 Civ 545

JO DAVIS MORTENSON, on behalf of herself and on behalf of all persons similarly situated,

PLAINTIFF

vs

SYRACUSE UNIVERSITY, etc., et.al.,

DEFENDANTS

PLAINTIFF'S SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO THE DEFENDANTS MOTION TO DISMISS THIS ACTION

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

JO DAVIS MORTENSON, being first duly sworn, deposes and says:

1. I am the individually named Plaintiff in the above-captioned legal action and I purport to represent not only myself but all women who have been, are, or may be victims of the Defendant University's alleged arbitrary, capricious and sexually discriminatory employment policies and practices.

2. I am submitting this Affidavit in view of the arguments held in this matter on Monday, March 18, 1974 in Albany, New York before the Honorable JAMES T. FOLEY, Chief Judge of the United States District Court for the Northern District of New York.

3. At the hearing before his Honor, my counsel, James I. Meyerson, set forth the procedures which I employed administratively before filing this action. Said procedures

are set forth in my initial Affidavit to this Court.

4. This action was filed in this Court pursuant to a Notice of Right to Sue which was issued by the Equal Employment Opportunity Commission in Buffalo, New York, over the signature of Mr. Lloyd Bell, Regional Director of that office.

5. Mr. Bell indicated that my Complaint, which was filed on September 23, 1973 was untimely but that a Notice of Right to Sue was still in order.

6. Said Notice of Right to Sue (a copy of which is attached to my initial Affidavit) was based on my Complaint to the EEOC that I had been terminated from my position as an Assistant Professor of English in the English Department at Syracuse University, effective June, 1971, in an arbitrary and capricious manner and based on arbitrary, capricious and sexually discriminatory policies and considerations.

7. Before filing my complaint with the EEOC in 1973, I pursued diligently my administrative remedies in the New York State Division of Human Rights. In addition, I purused my remedies through the University administrative structure.

8. Probable cause was found in the State Division of Human Rights; after conciliation failed an administrative hearing was held in this matter and an adverse ruling to my position was eventually handed down.

9. I have appealed that decision to the Appeals Board of the New York State Division of Human Rights and a decision is expected shortly (argument before the Appeals Board was held in October, 1973).

10. At the same time, the Academic Freedom, Tenure and Professional Ethics Committee of the University Senate issued a report in January, 1973, after holding hearings in my matter.

11. Said Committee found that my dismissal had violated appropriate and required University and Departmental procedures and was without adequate consideration in basis.

12. I had filed my grievance with said Committee in April, 1971, pursuing my remedies through that administrative body diligently.

13. The delay in the issuance of said report was totally beyond my control and was attendant to the delay inherent in that administrative procedure.

14. In April, 1973, the Department of English refused to act upon a request made of it to act upon the Senate Panel findings and reconsider my appointment to the faculty.

15. As late as October, 1973, the Chancellor of the University, Melvin Eggers, officially notified me that he was refusing to act upon the Senate Panel findings and reconsider my appointment to the faculty.

16. It must be understood that if I had not been terminated arbitrarily and capriciously, the Senate Faculty would not have made its findings and the University would not have been required to reconsider me for appointment to the faculty.

17. In substance then, the University's fai ure in this regard relates not to hiring me to a position at the University but rather deals with terminating from the position which I previously held with the University for five years.

18. On September 30, 1973, I clarified my Com.. int to the EEOC respecting the action of the University in April, 1973.

19. My initial Notice of Right to Sue was issued on September 27, 1973.

20. In December, 1973, the EEOC advised me that it was assuming jurisdiction of my Amended Complaint of September 30, 1973, relating to the failure of the University to act in April, 1973 pursuant to the requests made and based on the University Senate's findings.

21. As I indicated heretofore and as my counsel pointed out in oral argument, the April 30, 1973 action of the University is intricately involved with and connected to my termination; if the latter had not occurred the April 30, 1973 action (inaction) and the more recent October, 1973 action (inaction) would not have occurred.

22. As my counsel pointed out at the oral argument on March 18, 1974, he had spoken with Mr. Lloyd Bell that morning about this matter. Mr. Bell indicated to him, as he pointed out to your Honor, that,in all likelihood and in view of the federal court proceedings underway, he would issue another Notice of Right to Sue.

23. The EEOC had deferred to the New York State Division of Human Rights, as it was required to do under law, and had reassumed its jurisdiction.

24. Attached hereto is a copy of the Notice of Right to Sue which was issued over the signature of Mr. Lloyd Bell on March 27, 1974.

25. I submit that the initial Notice of Right to Sue was proper and that it gave to this Court appropriate jurisdiction under Title VII of the Civil Rights Act of 1964 as amended (42 U.S.C. §§ 2000(e) et. seq.).

26. The untimeliness referred to in that regard merely related to administrative convenience for undertaking its own investigation and not to the propriety of issuing a Notice of Right to Sue.

27. This is particularly so in view of the fact that I was not sitting idlely by during the intervening period of time between the initial discriminatory act and my filing of the initial Complaint with the EEOC.

28. In view of my amended complaint to the EEOC, immediatel after receiving my Notice of Right to Sue in September, 1973, the actions (inaction) of the Defendant University in April, 1973 and October, 1973, and the Notice of Right to Sue which was just issued by the EEOC, after it had assumed jurisdiction, appropriately deferred to the State, and then reassumed jurisdiction, and in view of the fact that the actions (inaction) of the Defendant University in April, 1973 and October, 1973 could not have and would not have occurred if I had not been terminated arbitrarilyand capriciously and in violation of of required University procedures and withoutconsideration in basis, this Court clearly has jurisdiction of this matter; and the Defendants' position in this regard has no basis in fact or law.

29. The defendants have also raised the issue of the propriety of the suit against certain of the named persons herein.

30. As pointed out in argument and the papers submitted heretofore, Syracuse University operates by and through its

employees and officers. In my complaint and amended complaint to the EEOC, the latter of which the EEOC assumed jurisdiction over, deferred to the State of New York, and then reassumed jurisdiction over, I named Syracuse University and the Chancellor thereof, Melvin Eggers, as Respondents. In the Complaint filed with this Court I named Syracuse University and Melvin Eggers as Defendants. In addition, I named several other individuals as Defendants, some of whom were named in my Complaint with the New York State Division of Human Rights. All of the individuals named herein were named in their official capacities.

31. I submit that this Court has proper jurisdiction over them pursuant to the Notice of Right to Sue which was issued by the EEOC, particularly in view of the continuing nature of effects in this matter.

32. If there is any basis in law for the Defendants' position in this regard, and I do not believe that there is, it should be dismissed as so narrowly construing the Federal Rules of Civil Procedure and more specifically the policy and intent of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000 (e) et. seq.),that it will have the unjust effect of penalizing lay persons, such as myself, who take it upon themselves, without the assistance of counsel, to pursue a remedy and enforce a right which they have.

33. In short, this Court should reject the Defendants' position in this regard as having no basis in fact or law.

34. As respects my Fourteenth Amendment allegations and state action under 42 U.S.C. § 1983 (the Civil Rights Act of 1866) and the Defendants' position in this regard, the Court should reject the latter until I have had an opportunity to present to this Court all the facts which establish Syracuse University as a quasi-public (quasi-governmental) institution subject to the aforementioned Civil Rights Act and the Fourteenth Amendment to the United States Constitution.

35. It is true that, in addition to showing the quasi-public nature of the institution, I must show an involvement by a governmental entity in the particular practice challenged, in this case the hiring, firing and promotion policies of the Defendant University.

36. Such can only be shown after I have had an opportunity to garner all the facts related to the control of the State of New York over the operation of Syracuse University, particularly as it relates to accreditation.

37. In that regard, faculty appointments and all actions related thereto, including promotions and separations of faculty personnel, are intricately related to accreditation.

38. I have attached hereto a circular, dated February 19, 1974, which was circulated to all full-time faculty members in the Department of English and which reflects that the New York State Department of Education has requested that faculty vitae be submitted to it. Such reflects that the State Department of Education is, for reasons unexplained, interested in the faculty personnel at least in the English Department at Syracuse University if not all Departments at

Syracuse University.

39. This fact along should be sufficient to allow discovery into the involvement of the State of New York into the affairs of Syracuse University as they relate to faculty appointments and policies related thereto.

40. This Court may eventually find that I have not established to its satisfaction sufficient involvment to permit jurisdiction herein under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, in conjunction with 28 U.S.C. § 1343 (3) and (4). However, I should be given the opportunity to discover in this regard.

41. Belk vs Chancellor of Washington University, 336 F. Supp. 45 (E.D. Mo. 1970), Braden vs University of Pittsburgh, 477 F. 2d 1 (3rd Cir. 1973) and Coleman vs Wagner, 429 F. 2d 1120 (2nd Cir. 1970), all of which are discussed in my Brief heretofore submitted to this Court (in addition to other authorities), support my position.

42. The Defendants contend that Grafton vs Brooklyn Law School, 478 F. 2d 1137 (2nd Cir [illegible], negates the principle enunciated in Wagner, supra. I submit that such is not so. In Grafton the Second Circuit merely held that on the facts submitted to the District Court there was not a sufficent showing of state involvement with Brooklyn Law School; and that the District Court had not committed reversible error in making that substantive finding.

43. The Second Circuit did not negate the principle that facts should be presented to the District Court before such a finding is made. It is submitted that merely because in Grafton the facts were submitted in the form of affidavits

is not a reason that
and other pleadings,/a litigant should not be afforded an opportunity to garner all of the facts in order to give the trier thereof sufficient information upon which to make a just and reasonable evaluation of the state's involvement in a particular University's affairs.

44. Not insignificantly, Grafton is the most recent of decisions in this Circuit on state involvement in a private university's disciplinary policies and practices; and accordingly, the Circuit was quite familiar with the facts related thereto, as well as the law in that regard.

45. In Belk, supra, as is pointed out in the memorandum of law heretofore submitted, Judge Harper found that the student discipline cases vis a vis private university policies and practices were in a "bag" by themselves; and that a Court should be hesitant to rule per force, in cases not involving student discipline, that as a matter of law there is no state action by a private university in the action taken. Wagner of course indicates that such is true even in student discipline cases in view of recent New York State legislation; and Judge Friendly seems to say that as a matter of law there is sufficent state involvment in the affairs of private universities in this state, as relate to student discipline, to make university action in this regard state action.

46. In sum, I submit that this Court should afford me the opportunity to exercise my right to discover in this regard, as such right is afforded to me under the Federal Rules of Civil Procedure. Moreover, in view of the jurisdiction of this Court, pursuant to Title VII of the Civil Rights Act

of 1964, as amended (42 U.S.C. §§ 2000(e) et. seq.), and the Notice of Right to Sue letters which I have received in this respect, I should be permitted to discover information relative to my substantive claims of discrimination.

47. Finally, the Defendants challenge the propriety of this action as a class action. I have set forth in my memorandum of law to this Court the authority in support of my position that, per force, this action is class in nature. At most this Court should defer a ruling in this regard until discovery has been completed so as to allow the Court to better determine if the class is merely theorectical in nature or real. The Affidavit submitted to this Court by the Women's Caucus at Syracuse University indicates that the proposed class is more than theorectical and is, in fact, very real. Accordingly, the propriety of the class's existence is not as much in issue as the definition of that class.

48. Moreover, in as much as I am challenging policies and practices of Syracuse University in so far as they relate to sex discrimination, the authority seems to indicate that I am a proper prosecutor of those claims, across the board so to speak, notwithstanding that my claim specifically focuses on the separation policies and practices of the University as they relate to professional staff. It should be pointed out that I do not purport to represent every female employee of the University but only those female employees who have professional status (i.e. faculty members and administrators).

49. In point of fact and law there very well may be unknown persons in this class, to wit: women who are not even born and women who, because of the challenged policies and

practices, have been discouraged from seeking professional employment status at the University.

50. The fact that I am currently unemployed from my position as a faculty member at Syracuse University does not have any bearing whatsoever on my ability to represent the class. After all, it is my unemployment status, itself, which is the very focus of this law suit. To say that I am unable to represent a class because I am currently unemployed is to reinforce/the discrimination which I contend has been perpetrated upon me by the Defendant University through the operation of its policies and practices. In short, it is illogical and a penalty of sorts. It is like contending that a Black person who has been excluded from a job because of racially discriminatory policies and practices cannot represent other Black persons presently employed in position but who are nevertheless subject to the same policies and practices which have already affected the individual. There is just no basis in law or logic for such a position; and if this Court adherred to such a position it would result in a multiplicity of cases on the same issue, a luxury which federal courts throughout this country can ill-afford. The Advisory Committee's comments on Rule 23 actions support my position fully. See: Plaintiff's Memorandum of Law heretofore submitted to this Court.

WHEREFORE, I respectfully pray that this Court deny the Defendants' Motion to Dismiss on all counts and direct that discovery herein be undertaken and completed as expeditiously as

possible so as to allow a speedy trial on the substantive issues in this action.

JO DAVIS MORTENSON

Sworn to and subscribed before me
this _____day of March, 1974.

NOTARY PUBLIC

My Commission Expires:_____

DEPARTMENT OF ENGLISH

February 19, 1974

TO: ALL FUEL-TIME FACULTY

We are being asked by the New York State Education Department to supply the curriculum vitae of all faculty engaged in graduate activities. These should include publication citations, service on national or professional committees, and important awards and recognitions. They should also include for each individual a breakdown in percent of time spent in teaching (differentiate graduate and undergraduate courses), student advisement, research, doctoral or masters committees, consulting, university service, and other activities.

Will you please submit up-to-date information on these matters by March 11. If it will be helpful to you you can consult Helen about the material prepared sometime ago in connection with our Doctor of Arts proposal.

Arthur W. Hoffman

/hl

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

CIVIL NO. 73 Civ 545

JO DAVIS MORTENSON, etc.,et.al.,

PLAINTIFF

vs

SYRACUSE UNIVERSITY,etc.,et.al.,

DEFENDANTS

PLAINTIFF'S SUPPLEMENTAL
AFFIDAVIT IN OPPOSITION
TO THE DEFENDANTS' MOTION
TO DISMISS THIS ACTION

JAMES I. MEYERSON
1790 Broadway - 10th Floor
New York, New York 10019
(212) 245-2100

ATTORNEY FOR PLAINTIFF, et. al.

JO DAVIS MORTESNON
219 Crawford Avenue
Syracuse, New York
(315) 446-5119

FOR HERSELF

IN THE
UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK

CIVIL NO. 73 Civ 545

JO DAVIS MORTENSON, on behalf of herself and on behalf of all persons similarly situated,

PLAINTIFF

vs

SYRACUSE UNIVERSITY, Inc., et. al.,

DEFENDANTS

AFFIDAVIT IN OPPOSITION TO THE DEFENDANTS' MOTION TO DISMISS

A F F I D A V I T

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

JO DAVIS MORTENSON, being first duly sworn, deposes and says:

1. I am the individually named Plaintiff in the above-captioned legal action and I purport to represent not only myself but all women who have been, are, or may be victims of the Defendant University's alleged arbitrary, capricious and sexually discriminatory employment policies and practices.

2. This action was commenced on December 7, 1973, with the filing of the Complaint with the Clerk of the United States District Court for the Northern District of New York; and it was subsequently served upon the Defendant parties by an agent of the Office of the United States Marshal for the Northern District of New York.

3. The action is brought to redress the maintenance and perpetuation of a pattern and practice of discrimination agains

women, solely because of their sex, in the hiring of women to, and the promotion and retention of women in, teaching positions on the faculty at Syracuse University, in contravention of the Fourteenth Amendment to the United States Constitution and the various acts of Congress which prohibit discrimination based on sex, to wit: 42 U.S.C. §§ 2000(e) et seq., as amended (Title VII of the Civil Rights Act of 1964).

4. I commenced this action pursuant to a "Notice of Right to Sue" letter sent to me on September 27, 1973 and issued by the Equal Employment Opportunity Commission, Buffalo, New York, Lloyd G. Bell, District Director. See: Exhibit "A" attached hereto and made part hereof.

5. In order to fully understand what substantive allegations in the Complaint fall within this Court's jurisdiction under Title VII of the 1964 Civil Rights Act, as amended (42 U.S.C. §§ 2000(e) et seq.), as such jurisdiction is conferred upon this Court pursuant to the "Notice of Right to Sue" letter which was issued by the Equal Employment Opportunity Commission on September 27, 1973, it is necessary to set forth herein the rather detailed course of action which I pursued in both the state and federal administrative agencies before the aforementioned "Notice of Right to Sue" letter was issued.

6. An understanding of the detailed course of action which I followed will lead to the inescapable conclusion that all of the allegations which I set forth in the Complaint, herein, as well as all of the Defendant parties named therein, are subject to the Notice of Right to Sue letter from the Equal Employment Opportunity Commission.

7. In October, 1969,I was arbitrarily terminated from my position as an Assistant Professor in the English Department at Syracuse University effective June, 1971.

8. At the time of the notification of my termination in October, 1969, I had been an Assistant Professor in the English Department for three years.

9. At the time of the notification of my termination in October, 1969, I was the only potentially continuing fulltime female faculty member in the English Department at Syracuse University.

10. At the time of the notification of my termination in October, 1969, my professional credentials and performance had not been properly evaluated according to the standards, practices and procedures of the Defendant University and the Department of English.

11. During the period from 1966 to 1973, to my knowledge no male faculty member has been terminated after only three years of teaching service in the Department of English at the Defendant University and/with or without adherence to the evaluation standards, practices and procedures of the Defendant University and the Department of English.

12. Furthermore, during the period from 1966 to 1973, males in positions parallel to mine have been repeatedly and continuously retained on the faculty in the English Department at Syracuse University notwithstanding that they possessed inferior academic qualifications than/I possessed at the time of my termination.

13. During the period from 1967 thru 1970 when I filed a Complaint with the New York State Division of Human Rights relating to my termination, no woman was offered or even seriously

considered for a teaching position in the Department of English at Syracuse University, although qualified women applied for positions and were available to fill the same.

14. During the period from 1967 thru 1970 when I filed a Complaint with the New York State Division of Human Rights relating to my termination, many men were seriously and actively considered for positions in the Department of English at Syracuse University; and a dozen men were appointed to the Department faculty.

15. In October, 1970, the Tenure Committee of the Department of English at Syracuse University affirmed my termination, effective June, 1971.

16. Prior to the October, 1970 affirmation of my termination by the Tenure Committee of the Department of English at Syracuse University, the Chairman of said Department, who is a standing member of said Tenure Committee, took the position that, because of my marriage to a member of the Department of English, I was ineligible for employment in view of the University's general policy against nepotism.

17. At the time of the initial notification of termination in October, 1969, I was not married to a member of the Department of English at Syracuse University.

18. Furthermore, the Chairman of the Department held the view, prior to the affirmation in October, 1970, that my termination was necessitated by budgetary plans which he had formulated and that the Tenure Committee's reconsideration of my termination was, in sum, meaningless.

19. In December, 1970, I filed a Complaint with the New York State Division of Human Rights alleging that my termination effective June, 1971, was arbitrary, capricious and discriminatory against me, because of my sex, in violation of the Human

Rights Law of the State of New York.

20. In April, 1971, pursuant to University procedures defined by the Faculty Manual, I filed a formal written request with the Academic Freedom, Tenure, and Professional Ethics Committee of the University Senate for consideration of and redress for my grievance.

21. Formal hearings were not held by said Committee until the Spring of 1972.

22. In May, 1971, the Executive Committee of the Department and the Chairman of the Department, who is a standing member of the Executive Committee, declined to consider my appointment to a faculty position in the Department of English at Syracuse University notwithstanding that a position was open and notwithstanding that there was a need for a person with my qualifications to fill said position.

23. The position still remains unfilled.

24. In April, 1971, the New York State Division of Human Rights found probable cause to exist in my complaint.

25. After conciliation with the Defendant University failed, a public hearing was held in the State Division of Human Rights.

26. In November, 1972, Jack Sable, the Commissioner of the New York State Division of Human Rights held that the Defendant University had not discriminated against me in violation of the Human Rights Law of the State of New York and in view of the standards applied thereunder and the state court cases related thereto.

27. The standards applied under the Human Rights Law of the State of New York are different than the standards em-

ployed when measuring conduct under the United States Constitution and the various federal civil rights acts designed to protect my right to be free from discrimination in employment because of my sex.

28. In December, 1972, I filed an appeal to the Appeals Board of the New York State Division of Human Rights from the decision of Commissioner Sable.

29. On January 19, 1973, a duly constituted hearing panel of the Academic Freedom, Tenure, and Professional Ethics Committee of the University Senate, issued a report after holding hearings in my matter and pursuant to the grievance procedure which I instituted previously, as heretofore set forth.

30. In its findings, said Hearing Panel found that my dismissal had violated appropriate and required University and Departmental procedures and was without adequate consideration in basis.

31. In spite of the findings of the Hearing Panel, the English Department of Syracuse University and officials of said Department and Syracuse University have refused and continue to refuse to rectify their errors as set forth by the aforementioned Hearing Panel and as is required by University grievance procedures.

32. The Chancellor of Syracuse University has failed to implement the recommendation of the University Hearing Panel as is required by the Faculty Manual which defines my contractual rights.

33. In spite of repeated written requests to have the University Hearing Panel's report presented to the Tenure Committee of the English Department at Syracuse University, since that report was handed down in January, 1973, the Chair-

man of said Department and various other members of the Department have refused and continue to refuse to act on the valid request.

34. As late as April 30, 1973, the Department of English at Syracuse University refused to comply with the request to reconsider my termination in view of the findings of the University Hearing Panel which found impropriety in the procedures employed by the English Department in terminating me and the substance of my termination.

35. On September 24, 1973, I filed a Complaint with the Regional Office of the Equal Employment Opportunity Commission in Buffalo, New York, alleging that my termination from my faculty position in the Department of English at Syracuse University, and the subsequent actions attendant thereto and related thereto, were arbitrary, capricious and discriminated against me because of my sex in violation of the 1964 Civil Rights Act as amended (42 U.S.C. §§ 2000(e) et seq.).

36. On September 27, 1973, Mr. Lloyd Bell, Regional Director of the Equal Employment Opportunity Commission Office in Buffalo, New York sent to me a letter and a Notice of Right To Sue attached thereto.

37. On September 30, 1973, I sent to Mr. Lloyd Bell a letter of clarification regarding my previously filed complaint with the Equal Employment Opportunity Commission.

38. On October 3, 1973, the Appeals Board of the New York State Division of Human Rights heard oral argument relative to my appeal from the adverse decision of Commissioner Jack Sable as heretofore set forth.

39. The Appeals Board of the New York State Division of Human Rights has still not rendered a decision in this matter.

40. On October 11, 1973, the Department of English at Syracuse University again refused to comply with the request to reconsider my termination in view of the finding of the University Hearing Panel which found impropriety in the proceedings employed by the English Department and the substance of my termination.

41. On October 18, 1973, the Chancellor of Syracuse University refused to act on the Hearing Panel's report as is required by the University procedures and regulations.

42. On December 3, 1973, Mr. Lloyd Bell, Regional Director of the Equal Employment Opportunity Commission Office in Buffalo, New York, wrote to me formally acknowledging the filing of my charges of employment discrimination with his office, as such charges were filed with said Commission pursuant to my letter of clarification and amendment of September 30, 1973.

43. In my letter to Mr. Bell, dated September 30, 1973, I specifically made reference to the fact that the Department of English at the Defendant University had refused the formal request for reconsideration of my termination, in view of the University Hearing Panel's report of January, 1973, as late as April 30, 1973.

44. The Defendant University seems to contend that the action (inaction) by the University as late as April 30, 1973 (and since that time) relates to my reappointment to the English Department faculty at Syracuse University and is therefore relative to hiring rather than firing. It appears that the Defendant University is dealing with a hiring practice rather than a termination and separation policy.

45. However, if I had not been arbitrarily and discriminatorily separated from the University in June, 1971 and the University Hearing Panel had not found irregularity in the procedures and substance of my termination, in January, 1973, the action and inaction ostensibly related to my hiring would not have taken place in April, 1973 and again on October, 1973. In other words, reappointment, qua hiring, as the University is using it, is really a euphemism for correcting my arbitrary irregular and sicriminatory separation from the University; the action and inaction of the University in April, 1973 and October 1973, in sum, deals with separation practices and not hiring practices and is inextricably attendant and related to my termination from Syracuse University.

46. My Complaint to the Equal Employment Opportunity Commission on September 24, 1973, as amended and clarified in my letter to Mr. Bell on September 30, 1973, was timely filed when considered in light of the April 30, 1973 action (inaction) by the Department of English at Syracuse University and officials thereof, which action (inaction) is intricately attendant to the arbitrary, irregular and discriminatory termination, itself, in June, 1971.

47. The following documents are attached hereto and made part hereof and relate to various paragraphs setforth herein: "Notice of Right to Sue", Exhibit "A"; letter to Mrs. Jo Davis Mortenson, September 27, 1973, from Mr. Lloyd Bell, "B"; Charge of Discrimination from Jo Davis Mortenson, September 24, 1973 and three pages attached thereto, "C"; letter to Ms. Jo Davis Mortenson, from Lloyd Bell, December 3, 1973, "E"; Determination After Investigation, New York State Division of Human Rights Neal Hoffman, April 9, 1971, "F"; Notice of Order After Hearing,

New York State Division of Human Rights, Jack Sable, November 16, 1972, "G"; Notice o f Appeal, December 7, 1972, New York State Division of Human Rights, Lloyd Hurst, "H"; letter from Jo Davis Mortenson to the Syracuse University Senate Subcommittee on Academic Freedom, Tenure and Professional Ethics, April 30, 1971,"I"; letter to Chancellor Melvin Eggers from John D. Brule, Chairman, Syracuse University Subcommittee on Academic Freedom, Tenure, and Professional Ethics, April 17, 1972, "J"; letter to Walter Sutton, Chairman, Department of English, from said John D. Brule, dated May 8, 1972 "K"; Memorandum, January 19, 1973, Report of Hearing Panel, "L"; letter to Ms. Jo Davis Mortenson, from the Honorable Richardson Preyer, March 11, 1974, "M".

48. In view of the foregoing statements and the documents attached hereto and made part hereof, it is evident that, if anything, my Complaint to the Equal Employment Opportunity Commission in Buffalo, New York, on September 24, 1973, as amended on September 30, 1973, was premature and not untimely and late.

49. Furthermore, administrative timeliness for the filing of a complaint with the Equal Employment Opportunity Commission relates only to the ability of the Equal Employment Opportunity Commission to undertake its own investigation and does not preclude and foreclose it from issuing a letter of Notice of the Right to Sue.

50. The issuance of the Notice of Right to Sue herein is itself an acknowledgement by the Equal Employment Opportunity Commission of my right to file a complaint in federal court relative to my claim of discrimination because of my sex.

51. Accordingly and based on the aforedescribed events,my

Complaint to the Equal Employment Opportunity Commission was timely; and, at most, this Court should, upon assuming jurisdiction, stay the Title VII aspect of the case while at the same time allowing me to pursue the discovery necessary to establish the significant and substantial nexus between Syracuse University and the State of New York.

52. Notwithstanding the Defendants' position that Syracuse University receives at most three million dollars from the State of New York, I believe that the Defendant University receives substantially more money from the State than that which is listed and, in addition, significant sums of money from the federal government, monies without which it could not function and operate at its current level.

53. I believe that approximately 45 % of the students attending Syracuse University receive some form of public assistance in order to pursue their education; and that said monies are deposited in the treasury of said University.

54. At the same time, the quasi public nature of Syracuse University is reinforced by various other inter-relationships it has with the State vis a vis the rules, regulations and laws of the State of New York and its agencies under which said University operates.

55. When I was initially hired to the faculty of the English Department at Syracuse University, my primary responsibility was in the area of Restoration Drama and American Drama; and I taught courses in those two areas for the first two years that I was on the faculty.

56. For the next three years and up to my termination from the faculty in the English Department at Syracuse University, I taught a course in Renaissance. I taught courses in Restoration Drama, as well, and,in addition, a sophomore English course.

57. Syracuse University and Joseph Bryant were and are Respondents in the State Division proceedings.

58. Syracuse University, a corporate educational entity, operates through its officers and employees.

59. Syracuse University, Chancellor Melvin Eggers and the English Department at Syracuse University were named Respondents in my EEOC complaint.

60. All of the named Defendants in this action are or were agents of Syracuse University for the purposes of this lawsuit and are subject to the jurisdiction of this Court notwithstanding that all of them may not have been specifically encaptioned in either the State or federal administrative complaints.

61. In view of the foregoing this Court has proper jurisdiction over all of the allegations contained in my Complaint and all of the Defendant parties named therein,said jurisdiction being conferred upon it pursuant to 42 U.S.C. §§ 2000(e), et. seq.(Title VII of the Civil Rights Act of 1964, as amended), the Notice of Right To Sue issued by the EEOC, thereunder, and the Civil Rights Act of 1871 (42 U.S.C § 1983).

_____

JO DAVIS MORTENSON

Sworn to and subscribed before me
this 18 day of March, 1974.

_____

NOTARY PUBLIC

My Commission Expires:_____

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE

TO:	FROM:
Jo Davis Masterson 219 Crawford Avenue Syracuse, New York 13224	U.S. Equal Employment Opportunity Commission Buffalo District Office 1 West Genesee Street Buffalo, New York 14202

YOUR CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:	EEOC REPRESENTATIVE	
☐ NO REASONABLE CAUSE ☒ UNTIMELY CHARGE ☐ NO JURISDICTION ☐ FAILURE TO PROCEED	Lloyd G. Bell	
	TELEPHONE NUMBER	CASE/CHARGE NUMBER
	(716) 842-5170	TSUL 0167

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Lloyd G. Bell

Lloyd G. Bell
District Director

cc Syracuse University

EEOC FORM APR 73 161

CHARGING PARTY'S COPY

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1 WEST GENESEE STREET
BUFFALO, NEW YORK 14202
(716) 842 - 5170

CERTIFIED MAIL NO. 059745

September 27, 1973

Mrs. Jo Davis Mortenson
219 Crawford Avenue
Syracuse, New York 13224

RE: Syracuse University
TBU4 0167

Dear Mrs. Mortenson:

This letter is in reference to your charge of employment discrimination. The Equal Employment Opportunity Commission has no jurisdiction over your charge and we have dismissed it for the following reason.

From the facts you have given us in your charge and supporting documents, there is no way in which EEOC can consider this a timely charge. For a discharge occurring prior to March 1972, your charge would have to have been received by us within 210 days of the date of discharge. For a discharge occurring after March 1972, your charge would have to have been received by us within 300 days of the date of discharge.

Your supporting documents for your charge indicate that you were terminated in October 1969 with a termination date effective June 1971. They further show that the act of termination was upheld in October 1970.

You indicate that you filed a charge with the New York State Division of Human Rights in December 1970, but you did not indicate the disposition of that charge nor the date of such disposition. Title VII of the Civil Rights Act of 1964, amended, requires that a charge filed with a State fair employment practice agency must be filed with EEOC within 30 days after the disposition of the charge by the State agency. All of the dates which you have submitted are over the time limits imposed by Title VII.

Notwithstanding this dismissal, you still have a right pursuant to Section 706 of Title VII to institute a civil action in United States District Court. Enclosed is a Notice of Right To Sue which you may use as a basis for suit.

Sincerely,

Lloyd G. Bell

LLOYD G. BELL
District Director

[illegible] ... IT IS [illegible] IMPORTANT TO FILE YOUR CHARGE AS SOON AS [illegible]

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

Case File No. ______________

(PLEASE PRINT OR TYPE)

Your Name (Mr., Mrs., Miss) [illegible] Phone Number 446-5110

Street Address [illegible]

City [illegible] State [illegible] Zip Code 13021

[illegible] (Please check one)

[illegible] ☐ [illegible] ☐ [illegible] ☐ Sex ☒

[illegible] you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship [illegible]

Name [illegible] University

Street Address

City [illegible] State New York Zip Code 13210

AND (other [illegible])

1. [illegible]

2. [illegible] Arts and Sciences during the period

[illegible]

[illegible]

Have you filed this charge with a state or local government agency? Yes ☒ When December 10, 1970 No ☐

If your charge is against a company or a union, how many employees or members? Under 25 ☐ Over 25 ☐

The most recent date [illegible] Up to and including today Month Sept Day 24 Year 1973

Explain what unfair thing was done to you. How were other persons treated differently? (Use extra sheet if necessary.)

[illegible] attached sheets

I [illegible] or affirm that I have [illegible] the above charge and that it is true to the best of my knowledge, information and belief.

Date Sept. 24, 1973

(Sign your name)

Subscribed and sworn to before me this 24TH day of September 1973

[illegible]

If it is difficult for you to get a Notary Public to sign this, sign your own name and mail to the Regional Office. The Commission will help you get the form sworn to.

FORM APP.: BUR. OF BUDGET—No. 124-R0001

FORM EEOC-5 (REV. 7-69)

section 7. Explain what unfair thing was done to you.

1. October 1969: I was improperly terminated (effective as of June, 1971) from the English Department after 3 years of university teaching.
   a. I was at that time the only potentially continuing fulltime female faculty member in the department
   b. I experienced discriminatory treatment in the nature and conditions of my employment.
   c. The department failed to provide me with written contracts as required by the Faculty Manual (which defines my contractual rights).
   d. The chairman reported that the tenure committee of the department decided to terminate me in October 1969, although my professional credentials and performance were not properly evaluated according to the department's and the University's standards, practice, and procedure.
   e. During the period of my direct knowledge of the department (1966-1973) no male faculty member has been terminated after so short a period of teaching service or with such disregard for evaluative standards and procedure. Moreover, during that period, males in positions parallel to mine have been repeatedly retained with less fulfillment of the professional criteria.
   f. During the period from 1967 thru 1970 (when I filed a complaint with the N.Y. State Human Rights Commission on my termination) no woman was offered or even seriously considered for a position in the department, although qualified women were available. During the same period, many men were seriously and actively considered, and a dozen men were appointed to the department faculty.

2. October 1970:
   a. The department chairman attempted to quash even the possibility of the tenure committee reviewing the October 1969 dismissal action by taking the position prior to the tenure meeting
      i. that my marriage to a member of the department rendered me ineligible for employment in view of a general university nepotism policy
      ii. that my termination was specifically an element in the department's budget plans formulated by him
      iii. that the committee could not reconsider the previous action in any case.
   b. the department tenure committee restated the October 1969 dismissal.

3. from November 1970 to April 1971:
   a. I sought for means of redress of my grievances within the University.
   b. In December 1970 I filed a complaint with the N.Y. State Human Rights Commission.
   c. In April, 1971, as per University procedures defined by the [illegible], I filed with the University Senate Committee on Promotion, Tenure, and Professional Ethics Committee a written request for redress of my grievances. (This committee has jurisdiction to institute a Hearing [illegible] evaluation in such a case.)
   d. The formal hearings were delayed by the University until spring of 1972.

4. May 1971: The executive committee of the department with the chairman declined to consider my appointment in spite of the opening and the need for a staff member with my qualifications. The position remains unfilled.

5. Fall 1972: Senior members of the department
   a. unanimously voted to deny my husband promotion
   b. misrepresented his record to the college promotion committee (which was responsible for final action on the promotion).
   c. suppressed the facts and positive evaluations of his performance.
   d. when the college promotion committee committee proceeded with an independent investigation of his record and awarded the promotion, the department Chairman in conjunction with the Dean of the college covertly attempted to subvert and overturn the promotion, and did so by methods in direct violation of University procedure.

6. from January 19, 1973 through the present time:
   a. The University Hearing Panel (duly constituted through the University Senate and University procedure), pursuant to my contractual right of review of a termination recommendation, found (January 19, 1973):
      1) that my termination was the result of improper procedure and inadequate consideration, both contrary to my rights.
      2) that the English department was responsible.
      3) that the decision on my reappointment should be returned to the English department tenure committee for reconsideration.
   b. Department Chairman [illegible] Sutton (letter of April 30, 1973) and some members of the department in spite of written request:
      1) prevented the department tenure committee from receiving, as required, the Hearing Panel report
      2) refused to consider my reappointment

c. The Chancellor has failed to implement as required the Hearing Panel finding on my reappointment

7. Human Rights Commission Action pending on the December 10, 1970 Complaint:
   a. probable cause found April 9, 1971
   b. hearings held in 1972
   c. November 16, 1972: I was sent notification that the Complaint was not sustained
   d. I filed an appeal, the hearing for which is scheduled on October 3, 1973

219 Crawford Avenue
Syracuse, New York
13224
September 30, 1973

Lloyd G. Bell, District Director
Equal Employment Opportunity Commission
Buffalo, New York 14202

Dear Mr. Bell:

I am enclosing a revised page 2 and 3 to replace my original page 2 of the dismissal notice in regard to Section 7. I regret that my attempt to speedily inform you resulted in my failure to provide you with clear information on the important point of timeliness.

On this question, the three major points in my revised statement are:

1) that the action by the Tenure Committee in October 1970 was subject to review by the University Hearing Panel. That review process began in April 1971, and the Panel on January 19, 1973, found that the October 1970 dismissal recommendation was improper.

2) that the English department has refused to consider my reappointment (the Sexton letter of April 30, 1973, fixes a specific date in writing).

3) that the Human Rights Commission action on my Complaint filed on December 10, 1970 is still in process, and the appeal hearing date is set for October 3, 1973.

I will be ready to have notarized anew and resubmit my whole Complaint with the new pages if that is necessary or desirable.

Sincerely,

Jo Davis Mortenson

Jo Davis Mortenson

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1 WEST GENESEE STREET
BUFFALO, NEW YORK 14202
(716) 842 - 5170

December 3, 1973

Ms. Jo Davis Mortenson
219 Crawford Avenue
Syracuse, New York 13224

In reply refer to: TBU4-0167

Dear Ms. Mortenson:

This is to acknowledge the formal filing of your charge of employment discrimination with this agency following termination of the period of deferral to the State of New York.

We are pleased to inform you that a representative from this office will contact you at the time we are able to commence our investigation of your charge.

Sincerely yours,

Lloyd G. Ball
District Director

Note: If your address changes, you must complete the information below and promptly mail it to us in order to prevent delay in investigating your case.

Effective _____ my address changes to:

_____
(Street Address) (City & State) (Telephone)

NEW YORK STATE : EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS

JO DAVIS MORTENSON Complainant VS. SYRACUSE UNIVERSITY, SCHOOL OF LIBERAL ARTS, DEPARTMENT OF ENGLISH; AND DEPARTMENT CHAIRMAN, JOSEPH DUDEK, JR. Respondents	In all correspondence, please refer to: Case No. V-CS-764-70 CS-22777-70

DETERMINATION AFTER INVESTIGATION

On December 10, 1970, Jo Davis Mortenson, who is a female, filed a verified complaint with the State Division of Human Rights charging the above-named respondents with an unlawful discriminatory practice relating to employment because of her sex, in violation of the Human Rights Law of the State of New York.

After investigation, the Division of Human Rights has determined that it has jurisdiction in this matter and that there is probable cause to believe that the respondents have engaged in or are engaging in the unlawful discriminatory practice complained of.

Pursuant to Section 297.4.a of the Law, this matter is hereby ordered to public hearing. A Notice of Hearing shall be issued.

Dated: April 9, 1971

STATE DIVISION OF HUMAN RIGHTS

By Neal M. Hoffman
Neal M. Hoffman, Regional Director

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

STATE DIVISION OF HUMAN RIGHTS on the complaint of JO DAVIS MORTENSON, Complainant, - against - SYRACUSE UNIVERSITY, SCHOOL OF LIBERAL ARTS, DEPARTMENT OF ENGLISH; AND DEPARTMENT CHAIRMAN, JOSEPH BRYANT, JR., Respondents.	NOTICE OF ORDER AFTER HEARING CASE NO. CS-22777-70

SIRS:

PLEASE TAKE NOTICE that the within is a true copy of an Order issued herein by Jack M. Sable, Commissioner of the State Division of Human Rights, after a hearing held before Hearing Examiner Norman Mednick. In accordance with the Division's Rules of Practice, copies of this Order have been filed in the offices maintained by the Division at 270 Broadway, New York, New York 10007, and at 333 East Washington Street, Syracuse, New York 13202. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that in accordance with Section 297-a of the New York State Human Rights Law, any party to the proceeding aggrieved by said Order of the Division may obtain review thereof in a proceeding before the State Human Rights Appeal Board, 250 Broadway, New York, New York 10007, provided such appeal is commenced by the filing with the Board of a notice of appeal within fifteen (15) days after the service of this Order.

DATED: NOV 16 1972

NEW YORK, NEW YORK

STATE DIVISION OF HUMAN RIGHTS

Jack M. Sable

JACK M. SABLE
COMMISSIONER

71

Mrs. Jo Davis Mortenson
[illegible]
[illegible], New York

Goldsmith & Strunk, Esqs.
Faith A. Seidenberg, Esq., of Counsel
1404 State Tower Building
Syracuse, New York 13202

Syracuse University
School of Liberal Arts
Department of English
Hall of Languages
Syracuse University Campus
Syracuse, New York

Joseph Bryant, Jr., Ph.D.
3268 Foxtail Court
Lexington, Kentucky

Bond, Schoeneck & King, Esqs.
William F. Fitzpatrick, Esq., of Counsel
1000 State Tower Building
Syracuse, New York 13202

Henry Spitz, Esq., General Counsel
Rosamond Prosterman, Esq., of Counsel
State Division of Human Rights
270 Broadway
New York, New York 10007

Hon. Louis J. Lefkowitz
Attorney General
80 Centre Street
New York, New York 10013

STATE OF NEW YORK
Executive Department

STATE HUMAN RIGHTS APPEAL BOARD
250 Broadway 11th floor
New York, N. Y. 10007
488-2033(area 212)

RE: STATE DIVISION OF HUMAN RIGHTS on the complaint of
JO DAVIS MORTENSON, Complainant-Appellant
Vs.
SYRACUSE UNIVERSITY, SCHOOL OF LIBERAL ARTS,
DEPARTMENT OF ENGLISH AND DEPARTMENT CHAIRMAN,
JOSEPH BRYANT, JR., Respondents

Case No. CS-22777-70 APPEAL NO. 1567

PLEASE TAKE NOTICE that an appeal to the State Human Rights Appeal Board has been filed in the above entitled case by Attorney Faith A. Seidenberg, on December 1, 1972, in behalf of Jo Davis Mortenson, complainant-appellant, from the Order of the Commissioner of the State Division of Human Rights dated November 16, 1972. In due course this matter will be considered by this Board and you will be advised of the further proceedings.

STATE HUMAN RIGHTS APPEAL BOARD

By Lloyd L. Hurst
Lloyd L. Hurst
Chairman

Dated: December 7, 1972

TO:
Ms. Jo Davis Mortenson
219 Crawford Avenue
Syracuse, New York

Ms. Faith A. Seidenberg, Attorney
Seidenberg & Strunk, Counselors at Law
1404 State Tower Building
Syracuse, N. Y. 13202

Syracuse University
School of Liberal Arts
Department of English
Hall of Languages
Syracuse University Campus
Syracuse, New York

Joseph Bryant, Jr., Ph. D.
3233 Foxtail Court
Lexington, Kentucky

TO:
Commissioner Jack M. Sable
State Division of Human Rights
270 Broadway
New York, N. Y. 10007

Henry Spitz, Esq., General Counsel
State Division of Human Rights
270 Broadway
New York, N. Y. 10007

Hon. Louis J. Lefkowitz
Attorney General
80 Centre Street
New York, N. Y. 10013

cc: Bond, Schoeneck & King, Esqs.
William F. Fitzpatrick, Esq., of Counsel
1000 State Tower Building
Syracuse, New York 13202

April 3[illegible], 1971

Senate Committee on Academic Freedom, Tenure, and Professional Ethics
Professor Leland Jamison, Chairman

I would like for your committee to investigate from the point of view of unethical treatment and infringement of academic freedom the sexual discrimination which resulted in my firing. I will present here a few of the salient facts and would be glad to discuss and elaborate in a meeting with your committee.

1. Though I have a PhD, I have not been assigned graduate courses while men without a PhD have been given graduate courses (I have had an occasional 500 level course, an undergraduate course to which graduate students may be admitted; However, 2/3 of my teaching has been restricted to sophomore survey).

2. The tenured staff during last fall's tenure considerations introduced non-professional, sexually biased considerations of the men candidates: whether or not they had families or other financial responsibilities. They did not investigate whether or not a man's wife could support him as well as my husband could support me but simply assumed that the man should be the supporter. They did not investigate--even if such considerations were valid, as they are not--whether I had similar financial responsibilities.

3. There are four areas of qualification which the department considers in retaining faculty members: PhD, publication, university service, and teaching. An objective comparison of my professional qualifications with those of the two men who were retained demonstrates the unequivocal strength of my performance and the inequitable and non-professional character of the tenured members' decision.
   a. I have a PhD--neither man does.
   b. I have published--neither man has.
   c. I have been more involved in university service than either man.
   d. Both Touchstone and the Director of Lower Division Studies reported favorable reaction to my teaching.

4. The tenured staff seems to have been undisturbed at the absence of dossiers of women candidates presented for hiring consideration and seem tacitly to approve the dwindling number of women on the staff qualified to teach upper level undergraduate and graduate courses in literature (Mrs. Wylie retires next year, I am fired, and the woman hired for next year in the wake of my complaint to the Division of Human Rights teaches linguistics, which is a non-literary specializati

5. The Division of Human Rights has investigated and on April 9 indicated a finding of probable cause. Unless some equitable compromise between the university and me is possible, the case will go to open hearing this summer.

Sincerely,

Jo Ann Davis

Jo Ann Davis
Assistant Professor, English Department

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April 17, 1972

Chancellor Melvin Eggers
300 Administration Building

Dear Chancellor Eggers:

For approximately one year, the Senate Subcommittee on Academic Freedom, Tenure, and Professional Ethics has had before it a complaint by Dr. Jo Ann Davis, formerly an Assistant Professor in the English Department, which in essence alleges that sexual discrimination contributed significantly to the decision to not reappoint her. Following the Faculty Manual, Section 2,8,15, we attempted to settle the matter by informal methods, but were not able to resolve the difficulty. It is our belief that if what she alleges is true, then there has been a violation of her academic freedom. The Subcommittee has communicated this to Dr. Davis, and she has requested an open hearing. We will, thus, follow the procedures outlined in the Faculty Manual in Sections 2,8,11, 2,8,12, and 2,8,15. This letter then is formal notice to you or your delegate, and any officials of the Administration whomade the decision to not reappoint her, to be prepared to come forward with evidence in support of their decision. If these people based their decision in whole or in part upon the recommendation of the tenure Committee of the English Department, then we expect that such officials will also inform members of the tenure Committee to be prepared to appear before the Subcommittee on Academic Freedom, Tenure, and Professional Ethics.

We have scheduled the hearing for Monday, May 8, 1972, at 7:00 p.m., the place to be announced later. The hearing will start with procedural matters, such as the makeup of the hearing panel. Dr. Davis will then be asked to state the grounds upon which she bases the allegation, with the burden resting upon her to establish a prima facie case before the hearing panel. If she succeeds in doing, this, then it will be incumbent upon those who made the decision to not reappoint her to come forward with evidence in support of their decision.

According to Section 2,8,11,3.5, a verbatim record of the hearing shall be taken and a typewritten copy made available without cost to Dr. Davis, at her request. We, thus, request that your office assume the responsibility to meet this requirement. Further, we would like to know if you wish a representative of a responsible educational association to attend the proceedings as an observer.

It is our hope that the best interests of academic freedom will be served in whatever follows.

Sincerely yours,

John D. Krulé
Chairman, Senate Subcommittee on
Academic Freedom, Tenure, and
Professional Ethics

JDK:emb

May 8, 1972

Professor Walter Sutton
Chairman
Department of English
203 Hall of Languages

Dear Professor Sutton:

As a result of the hearing granted to Dr. JoAnn Davis on Monday, May 8, 1972, at 7 P.M., the hearing panel of the Senate Subcommittee on Academic Freedom, Tenure, and Professional Ethics has unanimously determined that Dr. Davis has established a prima facie case of discriminatory practices in violation of her academic freedom. We are therefore now scheduling further hearings, the first one of which will be held on Tuesday, May 16, 1972 at 7:30 P.M. in Room 10, H. B. Crouse Hall.

At the request of Dr. Davis, all hearings will be open. We do not intend to publicize the hearings, and no television equipment or photographic flash or floodlights or private recording devices will be permitted in the hearing room.

The hearing on May 16 will be for the purpose of permitting Dr. Davis to present her case and introduce whatever relevant documents she wishes. Representatives of the University and the Department of English will have the right to cross-examine Dr. Davis, and members of the hearing panel will also be free to question her. Subsequent hearings will give representatives of the University and the Department of English, as well as any witnesses whom they or Dr. Davis may wish to call, the opportunity to testify fully.

Copies of the tape recording made of the hearings on May 8 will be given to all interested parties as soon as they are available.

Sincerely yours,

John D. Brule
Chairman, Senate Subcommittee
on Academic Freedom, Tenure
and Professional Ethics

JDB/jdg

L

January 19, 1973

MEMORANDUM

Attached is a copy of the report of the Hearing Panel established by the Subcommittee on Academic Freedom, Tenure and Professional Ethics. This report is being sent to the Chancellor, Dr. Davis, the Chairman of the Department of English, the Hearing Panel, and the members of the Subcommittee.

John D. Brule'
Chairman, Hearing Panel

1/

REPORT OF THE HEARING PANEL

appointed by the

University Senate Subcommittee on Academic Freedom,

Tenure, and Professional Ethics

to hear the charges lodged by

Dr. JoAnn Davis

against the

Department of English

Syracuse University

January 19, 1973

Panel Members

John D. Brulé - Chairman
Professor of Electrical Engineering

Pauline Atherton
Professor of Library Science

David H. Bennett
Professor of History

Judith Dollenmayer
Graduate Student

Robert Exner
Professor of Mathematics

Samuel Fetters
Professor of Law

Clarence Livingood III
Graduate Student

Kathryn Morgan
Associate Professor of Mathematics

George Stern
Professor of Psychology

Sidney Thomas
Professor of Fine Arts

SUMMARY OF THE MEETINGS AND MEMOS BETWEEN

THE SUBCOMMITTEE, THE HEARING PANEL, THE

ENGLISH DEPARTMENT, AND DR. DAVIS.

Dr. JoAnn Davis first contacted the University Senate Subcommittee on Academic Freedom, Tenure, and Professional Ethics on April 30, 1971. A fact-finding team was formed and informally made inquiries during May and June. Their unofficial report was that the matter might be settled over the summer. However, after no settlement had been reached, the fact-finding team was reconvened by the Subcommittee in December, 1971, and reported to the Subcommittee in January, 1972.

Dr. Davis contacted the Subcommittee again on March 17, 1972. She charged that the Department of English had, in the course of considering her reappointment to the faculty: 1) violated her Academic Freedom by discriminating against her on the basis of her sex; 2) committed procedural errors; and 3) given inadequate consideration to evidence supporting her professional and academic competence.

On April 10, 1972, the Subcommittee informed Dr. Davis that, "It is our belief that if what you allege is true, then there has been a violation of your academic freedom. We are, thus prepared to investigate the charge that sex discrimination contributed significantly to the decision not to reappoint you." The other two charges were ignored, without prejudice, by the Subcommittee as a result of the expectation that an action then pending before the University Senate would have formally placed the responsibility for hearing grievances not bearing directly on Academic Freedom in the hands of the Appointments and Promotions Committee.

On April 12, 1972, Dr. Davis responded to the Subcommittee and, as a result, a Hearing Panel was formed. At Dr. Davis' request, the hearings were open.

On April 17, 1972, the Chancellor of the University and Dr. Davis were informed that the Hearing Panel would meet on May 8, 1972.

On April 24, 1972, the Subcommittee was informed by Dr. Davis that she wished to receive a typewritten transcript of the hearings, that the local AAUP be permitted to send an observer to the hearings, and that Dr. Mortenson appear as her advisor or counsel.

The Hearing Panel was composed of those 8 members of the Subcommittee who had not previously had direct contact with the case, augmented by 3 additional persons from the University community. On April 25, 1972, the make-up of the Hearing Panel was announced to Dr. Davis and the Chancellor.

After a preliminary hearing on May 8, 1972, the Hearing Panel:

"...unanimously determined that Dr. Davis has established a *prima facie* case of discriminatory practices in violation of her academic freedom." This was communicated to Dr. Davis, the Chancellor, and the Chairman of the Department of English. Additional meetings of the Hearing Panel were held on May 18, 19, 30, 31 afternoon and evening and on June 1, 5,6,7,12,13, and 14. Transcripts of the testimony totaled about 950 pages.

One Panel member found it impossible to attend a significant number of the hearings and withdrew from the Panel.

The ten remaining members of the Panel deliberated on July 3,4 and 5th. On July 6th a delegation was sent to meet with Dr. Davis and representatives of the English Department to announce informally that the Panel was split 5-5 on the charge of sex discrimination; thus Dr. Davis did not sustain her case.

On July 17, 1972 the Senate Subcommittee was contacted by Professor Lewin (with the authorization of Dr. Davis). He asked the Subcommittee to consider the additional two charges raised by Dr. Davis in her letter of March 17, 1972, namely that she did not receive adequate consideration and that procedural errors were involved in the decision not to reappoint her. The Subcommittee met on July 31, 1972, and in view of the fact that the University Senate had not acted on procedures affecting such grievances in its 1971-1972 agenda, instructed the Hearing Panel to consider these two charges. The Hearing Panel met on August 2, 1972. Dr. Davis had informed the Panel that she did not need to supply additional evidence, and, by memo dated August 3, 1972, the Panel asked the English Department if they wished to supply additional evidence or argument. The next meeting of the Hearing Panel was set for August 25, 1972. On August 7, 1972, the English Department expressed to the Chairman of the Academic Freedom Subcommittee their surprise at the Subcommittee's decision. On August 9, 1972, the English Department informed the Hearing Panel, by memo, that the department would respond after receiving a reply to its letter to the Subcommittee. On August 11, 1972, the Chairman of the Academic Freedom Subcommittee responded, in writing, to the English Department, communicating to them the sense of the Subcommittee on the various matters of concern to the English Department mentioned in their letter of August 7, 1972. On August 15, 1972, the English Department sent a letter to the Chairman of the Subcommittee in which it "...renews its request for a discussion of and a response to its letter of August 7th by the Committee." On August 16, 1972, the Chairman of the Subcommittee again responded to the English Department, attempting once again to clarify the situation, and asking again if the English Department wished to supply further evidence or argument before the Hearing Panel deliberated the two charges. On August 23, 1972, a second memorandum from the English Department informed the Hearing Panel that "...the Department does not feel that it can give its endorsement to the Panel's further deliberations -- or indeed even respond properly to the Panel's request of August 3 -- until it has received a clarifying response to its questions."

The Hearing Panel met on August 25, 1972, and on September 5, 1972, renewed its request to the English Department to respond to the Panel's memo of August 3, 1972. On September 12, 1972, the Chairman of the English Department sent a memo to the Hearing Panel, which said in part, "In view of the nature of the communication between the Department and the Subcommittee on Academic Freedom, the Department doubts that any useful purpose would be served by further correspondence with either the Subcommittee or the Panel." The Hearing Panel met on October 12, 1972. On October 13, 1972, by memo to the Subcommittee, the Panel asked the Subcommittee to appoint an *ad hoc* committee to meet with representatives of the English Department in order to clarify further the issues involved in a continuation of its hearings. The Subcommittee formed such a group, which met twice with representatives of the English Department and once with Dr. Davis. On November 11, 1972, the Chairman of the English Department delivered a "Summary Statement on Procedures and Consideration in the JoAnn Davis Case" to the Chairman of the Hearing Panel; Dr. Davis delivered an "Expanded Summation" on November 13, 1972. The Hearing Panel met on November 14, 1972, with one member absent, who had left Syracuse. After deliberation at this meeting, final votes were taken on Dr. Davis' charges of procedural error (sustained 7-2) and inadequate consideration, (sustained 5-4).

I. THE CHARGE OF VIOLATION OF ACADEMIC FREEDOM AS A RESULT OF SEX DISCRIMINATION.

In deliberating on this charge, the Hearing Panel had to try to determine the motivation of members of the English Department's Tenure Committee when they decided not to reappoint Dr. Davis. Had this decision been motivated by discrimination against Dr. Davis because of her sex, then her Academic Freedom would have been violated.

The vote of the Hearing Panel was 5 to 5 on the question whether the Academic Freedom of Dr. Davis was violated by sex discrimination. Thus, the Panel did not support this charge by Dr. Davis.

DISCUSSION.

This was the first charge brought before the Hearing Panel, and the one it was directed to consider initially by the Senate Subcommittee. Because the charge involved alleged violation of Academic Freedom, it was by far the most serious. The Panel did not support Dr. Davis in her charge that she was singled out for partiuclar harassment, or unequal treatment, because she is a woman.

II. THE CHARGE OF INADEQUATE CONSIDERATION.

In order to determine whether the qualifications of Dr. Davis were inadequately considered in the process of reaching a decision not to reappoint her, the Hearing Panel weighed the evidence and tested it against the following questions: 1) was the decision conscientiously arrived at; 2) was it a bona fide exercise of professional academic judgement; 3) was all available evidence sought out and considered; 4) were irrelevant and improper standards excluded; and 5) was there adequate deliberation upon the evidence by the department? [AAUP,P11]*

*Reference is to the document "Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments" published in AAUP Policy Documents and Reports, 1971 p.1 1971, PG.11.

The Hearing Panel found, by a vote of 5 to 4, that there was inadequate consideration of Dr. Davis in the decision not to reappoint her.

The Hearing Panel did not address the question whether Dr. Davis merited reappointment. This was and is the right and responsibility of the Department of English.

FINDINGS.

1) The Tenure Committee of the Department of English did not conscientiously seek out and consider all relevant information concerning Dr. Davis.

2) The Tenure Committee of the Department of English gave major importance to evidence concerning Dr. Davis which was not clearly related to the criteria of Tenure communicated to her by the Department.

DISCUSSION.

These findings will be discussed together, for they are strongly connected. The Department of English Summary Statement, under the general heading "Adequacy of Consideration, Comments" (page 3), says:"3) The tenured members of the faculty were aware of the fact that the complainant's senior colleagues were not impressed by her intellectual qualities or her expressed ideas. Her senior colleague, Professor Mary Marshall, characterized the complainant as not qualified for a permanent place in the Department (testimony of M. Marshall)."

As the testimony developed, it became clear that Professor Marshall's opinion weighed heavily, perhaps decisively, in the Department's judgment of Dr. Davis. It becomes centrally important to the question of adequate consideration to determine the basis on which Professor Marshall placed her judgment of Dr. Davis, for her other colleagues would hear her views with special attention because she specialized in the same field as Dr. Davis and because she was one of the most distinguished and respected members of the Department. The crucial evidence here comes from Professor Marshall's testimony: "The primary grounds for my decision, my personal decision, that she should not be kept was that I did not find in her the lively play of ideas which I would expect from someone who was to become a tenured member of a university faculty." (Hearing, June 7.). Professor Marshall made clear in further testimony that the presence or absence of a lively play of ideas was assessed by her solely on the basis of random personal contacts with Dr. Davis. In response to a question by Dr. Davis, Professor Marshall replied, "I just remember encountering you occasionally at a party or a meeting, or occasionally in the corridor." (Hearing, June 7).

As applied to Dr. Davis, this subjective method of judging intellectual capacity was improper and inadequate. The conversational exchanges on which she was rated by Professor Marshall -- and, most importantly, by extension, by the English Department as a whole -- were, through no evident fault of Dr. Davis, brief and infrequent.

The problem, in the opinion of the Panel, is not so much that subjective assessment was a factor in the decision, as that it dominated the Department's consideration of Dr. Davis.

Professor Marshall asserted: "It would never have occurred to me to go back and read the dissertation [Dr. Davis] wrote before she came here, because in this profession, normally, we are judged on what we are and do right then and there."*(Hearing, June 7.) Carried to its logical conclusion, this statement could be construed to mean that any previous scholarly activity, published or unpublished, might be disregarded in considering a candidate for tenure.

Personal judgment of colleagues by colleagues occurs everywhere, and inevitably plays a role in tenure decisions. It may also be that this process of personal appraisal works with special force in humanistic faculties, where the essential qualities of work elude exact statement or credentials. But personal judgment and the consideration of credentials ought to operate together, not by the exclusion of one or the other. The Panel acknowledges the Department's right to choose its criteria of merit in selecting colleagues. But the Panel objects to the hidden importance of judgments of style and liveliness in this case, where the candidate assumed that she would be tested against the three stipulated standards of scholarship, teaching, and community service alone. The subliminal importance of the personal assessment seems especially dubious because, in the opinion of the Panel, it was aggravated by inordinate reliance on the opinion of a few Department members and negligible attention by almost every faculty member to the more objective material that was available--however lightly the tenured faculty might have regarded that material had each member sought it out before casting his vote.

In 1969 and 1970, when Dr. Davis' case came before the Tenure Committee, there was ample evidence of a shrinking job market. It is clear that, at that time, the department was resolved to strengthen itself in scholarship. It is also clear that a degree of estrangement existed between older and younger members of the English faculty. Given this atmosphere, the Panel believes that ... scrupulous attention should have been paid to the assessment of Dr. Davis by every voting member of the tenured faculty. In testimony it was repeatedly maintained that Dr. Davis offered no material of sufficient quality to have won her a tenured post. That may well be true. But a presumptive judgment of her personal quality of mind, arrived at by desultory and, in some cases, second-hand contact with her, deflected most voting members of the faculty from reading the material she did submit.

III. THE CHARGE OF PROCEDURAL ERRORS.

In its consideration of the procedures followed by the Department of English, the Hearing Panel was guided by a principle stated by the AAUP Committee A on Academic Freedom and Tenure:

*Emphasis added.

"Criteria and Notice of Standards. The faculty member should be advised, early in his appointment, of substantive and procedural standards generally employed in decisions affecting renewal and tenure. Any special standards adopted by his department or school should also be brought to his attention." [AAUP p.12].

The Panel also sought to determine if the procedures followed could provide guidance to the probationers, help assure them of a fair professional evaluation, and were in accord with rules established by the English Department. [AAUP p. 11].

The Hearing Panel found,by a vote of 7 to 2, that errors existed in the procedures followed in arriving at the decision not to reappoint Dr. Davis.

FINDINGS.

1) The vote in the 1969 Tenure Committee meeting was not by secret ballot, while the change in wording of the departmental constitution which supported an open vote was not properly approved by the faculty.

2) There is no evidence that Dr. Davis was properly informed that the English Department gave unequal weight to their three stated criteria of service, teaching, and scholarly activity. It is clear from the testimony that the Tenure Committee's order of importance, for probationary faculty, was scholarly activity, teaching, and service -- with service having little, if any, positive weight.

3) The probationary faculty were not properly asked to submit material in evidence for the Tenure Committee meeting in the Fall of 1969.

DISCUSSION.

1) The vote against tenure in the 1969 meeting was not by secret ballot, and, in the opinion of the Panel, departmental rules legally in force at that time called for a secret ballot in such matters. It appears that a show of hands was in fact customary, and there did exist a copy of departmental regulations that permitted such procedure. The wording of the section on voting,however, differed from earlier versions of the regulations, and the Panel concludes from the evidence presented to it that the change in wording was not properly approved by the faculty.

2) Dr. Davis was supplied with the Faculty Manual; her letter of appointment refers her to the sections concerning principles and procedures concerning tenure, and promotions. She was thus informed that advancement would depend on teaching, scholarly activity, and service (community and university).

In the hearings it emerged clearly that the tenured English faculty did not give equal weight to development in these three areas. There is no evidence that this was made clear to Dr. Davis early in her service.

3) There is evidence that Dr. Davis, and three other probationary faculty, were informed of impending tenure decisions in fall 1969, at a meeting called by the Chairman in the spring of 1969. There is also evidence that they were not so informed. Participants recollections of what ocurred at that meeting are widely at variance. Whatever is the truth of the matter, all agree that the junior faculty were not asked to submit material in evidence for the fall meeting. A genuine opportunity to submit materials requires that the probationer have a reasonably clear notion of the time he will come up for major decision regarding tenure or renewal. He needs this information in time to plan for tenure review and to assemble his evidence.

RECOMMENDATIONS.

1) The Department of English should accept responsibility for the procedural errors and inadequate consideration and make a statment to that effect which should be placed in Dr. Davis' professional file at Syracuse University. If Dr. Davis wishes, this statement should also be forwarded to Pennsylvania State University.

2) In accordance with guidelines established by the AAUP when inadequate consideration has been found, the Hearing Panel requests that the Tenure Committee of the Department of English reconsider its decision not to reappoint Dr. Davis. [AAUP p.11].

3) The department should remove from Dr. Davis' file the letter solicited by the former Department Chairman from Mr. Hahn, formerly president of a departmental student organization, as a student assessment of Dr. Davis' teaching ability, since the letter attests that Hahn had no direct knowledge of her ability.

4) The use of the folder of materials on each faculty member that is kept in the English Department should be strengthened. Probationary faculty should be encouraged to bring the material in these folders up to date well before any meeting that will consider tenure or reappointment.

5) The English Department should investigate systematic ways of increasing scholarly contacts between probationary and tenured faculty. This is particularly important if judgements are to be made on probationary faculty before they have published or otherwise presented scholarly work for outside porfessional criticism.

6) In this connection, it might be advisable for the Department of English to reconsider its policy of early tenure decisions and extended termination periods.

7) The English Department should pursue the investigation of suitable ways to assess and report teaching effectiveness. These should include systematic student inputs.

8) The English Department should make a conscientious effort to assess the extent to which highly subjective criteria are used by them to decide upon reappointment of junior faculty.

The following remarks are submitted by three members of the Hearing Panel who did not find with the majority on the charges of inadequate consideration and procedural errors. They are not intended as a formal "minority report," but as one effort to clarify some points of disagreement among the panelists who attended the 130 hours of testimony and discussion. It might be noted that we find with the majority on five of the important final recommendations.

Some General Observations.

It appears that an unfortunate climate of tension and misunderstanding colored relationships between some junior and tenured faculty; this, in turn, contributed to the breakdown of communications over procedures and other matters.

Events in the case in question transpired in a period before the Department of English (and most other departments and programs in American universities) had made systematic efforts to solicit student opinion on tenure and reappointment questions or to regularize other aspects of this decision-making process. Conditions obtained at that time which are tolerated no longer in departments, but in 1969 they reflected standard practice in a large segment of the national academic community.

Some Notes on "Inadequate Consideration"

Adequate time was made available for discussion of the qualifications of candidates at the decision-making sessions. Spokesmen for and against a positive recommendation were asked to present their views. An effort to evaluate success in teaching was made at this juncture.

Candidates were asked to submit evidence of scholarship and scholarly plans but, only before the meeting of 1970 took place. In our judgement, the tenured faculty should have made a special effort to read the candidate's long-completed dissertation in 1969 and 1970, but it should be noted that Dr. Davis did not take advantage of the opportunity to submit this manuscript as evidence of her scholarly activity.

After re-examining the testimony, we do not share the majority's view that a single member of the faculty played a decisive or central role in influencing the outcome. It is only natural that the view of a distinguished senior faculty member in the same field as the candidate would be received with special attention by her colleagues, but it seems clear that there were many other reasons for the final decision. While the concept of a "lively play of ideas" has been introduced by the majority as evidence of the English Department's "highly subjective, unverifiable" methods and as a consideration both "improper and inadequate," we do not believe that the general intellectual ability of a candidate for a permanent position on the faculty of a major university can or should be completely excluded from consideration in this case. Scholarship, teaching and service are the standard criteria for making decisions on tenure and reappointment, but testimony was submitted to the Hearing Panel by many tenured faculty in the department that they felt there was evidence of inadequacy in one major area, mixed evidence in another. It was in this context of lack of persuasive or conclusive evidence in the designated categories that general intellectual ability could be introduced as one way of predicting performance in scholarship and teaching in the future.

Some Notes on Procedural Errors

The department's procedures were not consistent in the period under review: the Department of English shared this problem with many other academic units which were not (some are still not) governed by extensive written constitutions. Still, custom and at least one written precedent was followed in the balloting in 1969, and there is not question about the ballot in 1970. The evidence indeed is mixed on the informational meeting in the Spring of 1969, but there is some reason to believe that an effort was made to inform candidates of what had become standard departmental practice in previous years. That unhealthy tension between some junior and tenured faculty may have contributed to the misunderstanding and confusion over what transpired at the meeting.

On General Recommendations

We find with the majority on points 3, 4, 5, 6, and 7.

David H. Bennett

Kathryn A. Morgan

While I did find some procedural error, I am in substantial agreement with these remarks.

Robert M. Exner

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RICHARDSON PREYER
6TH DISTRICT, NORTH CAROLINA
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207 U.S. POST OFFICE BUILDING
HIGH POINT, N.C. 27260

March 11, 1974

Ms. Jo Davis Mortenson
219 Crawford Avenue
Syracuse, New York 13224

Dear Ms. Mortenson:

Thank you for your letter about your sex discrimination case.

The Justice Department does have different divisions dealing with discrimination but for me to provide you with any contacts there, I will have to let them know the nature of your case so they could put me in touch with the proper division.

I have checked with the Department of Health, Education and Welfare as to the extent of funds they made available to Sycaruse University. Figures prior to 1969 are unavailable; however, following is a list of the funds from HEW to Syracuse:

Fiscal Year	1969	$7.5	million
"	1970	4.9	"
"	1971	5.1	"
"	1972	3.6	"
"	1973	9.2	"

I hope that this information is of assistance to you. I did write the Equal Employment Opportunity Commission asking to be advised of the disposition of your case.

Cordially,

Richardson Preyer

RP:ae